OF RECORD.

THE UNITED STATES.

27

AND DIRECTORS OF THE
PLAINTIFFS IN ERROR,

SIBLEY, BY HER CURA-
LEGAL REPRESENTA-
DECEASED.

OF THE STATE OF MISSOURI.

1857.

6

SUPREME COURT OF THE UNITED STATES.

No. 147.

THE BOARD OF PRESIDENT AND DIRECTORS OF THE ST. LOUIS PUBLIC SCHOOLS, PLAINTIFFS IN ERROR,

vs.

DAVID R. RISLEY AND SARAH R. RISLEY, BY HER CURATOR, GEORGE D. HUMPHREYS, LEGAL REPRESENTATIVE OF WILLIAM RISLEY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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THE UNITED STATES OF AMERICA:

To David R. Risley and Sarah R. Risley, by her curator, George D. Humphreys, legal representatives of William Risley, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Missouri, wherein the Board of President and Directors of the St. Louis Public Schools are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David Wagner, chief justice of the Supreme Court of the State of Missouri, this 24th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.
JAMES TAUSSIG,
Att'y for Plaintiffs in Error.

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Executed the within writ by reading the same to the within-named David R. Risley and George D. Humphreys, at Saint Louis, Missouri, in the said district, on the 6th day of June, A. D. 1867.

J. B. ROGERS,
U. S. Marshal Eastern District of Mo.

Marshal's fees: 2 services, $400.

1 STATE OF MISSOURI, *ss:*

Be it remembered, that on the first day of October, one thousand eight hundred and sixty-four, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the Circuit Court of St. Louis county, in the State aforesaid; which transcript is in the words and figures following, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on the tenth day of January, A. D. eighteen hundred and sixty-one, there was filed in the office of the clerk of the St. Louis Land Court, and now on file in the office of the clerk of the St. Louis Circuit Court by change of venue of said Land Court, a petition which is in words and figures following, to wit:

In the Saint Louis Land Court, March Term, 1858.

THE BOARD OF PRESIDENT AND DIRECTORS OF the St. Louis Public Schools, plaintiffs,
against
WILLIAM RISLEY, defendant.

2 *Petition.*

STATE OF MISSOURI, *County of St. Louis, ss:*

The plaintiffs state that on the fourth day of January, 1858, they were, and still are, entitled to the immediate possession of the following described premises in United States survey No. 400, of the series of St. Louis land, in block No. 856 in the city of St. Louis, and in the county of St. Louis, and State of Missouri, to wit: A piece or parcel of land fronting one hundred and sixty feet on the east side of Main street, and running back eastward of that width to Front street or the wharf, and bounded on the north by Lombard street, which is the northern boundary line of [of] said survey; on the west by Main street, which is the western boundary of said survey; on the south by a line parallel with and one hundred and sixty feet south of said northern boundary line of said survey, and on the east by said wharf, which is the eastern boundary line of said survey, and being so entitled to the possession thereof, that the said defendant afterwards, on the fifth day of January, 1858, entered into said premises and unlawfully withholds from the said plaintiffs the
3 possession thereof to their damages one cent.

The plaintiffs, therefore, ask for judgment against the defendant for the possession of said premises for said damages, for the monthly value thereof, and for costs of suit; and the plaintiffs also ask for such other further and general relief in the premises as they may be lawfully entitled to.

E. CASSELBERY,
Attorney for the Plaintiffs.

STATE OF MISSOURI, *County of Saint Louis, ss:*

William W. Greene, president of the Board of Directors of the Saint Louis Public Schools, the plaintiffs in the foregoing cause, makes oath and says he believes the foregoing petition and the matters therein as stated are true.

W. W. GREENE, *President.*

Subscribed and sworn to before me this 8th day of January, 1858.

CHARLES A. MANTZ, *Cl'k.*

On the filing of which petition the following summons was issued:

Summons.

THE STATE OF MISSOURI, *County of Saint Louis, ss:*

4 To the sheriff of Saint Louis county greeting:

We command you to summon William Risley to appear before the judge of our Saint Louis Land Court on the first day of the next term thereof, to be held in the city of Saint Louis, within and for the county of Saint Louis, on the second Monday of March next, then and there to answer the complaint of the Board of President and Directors of the Saint Louis Public Schools, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of Saint Louis, this 9th day of January, in the year of our Lord eighteen hundred and fifty-eight.

[SEAL.] CHARLES A. MANTZ, *Clerk.*
By SAM. DICKS, *D. C.*

There is endorsed on said writ the following return of sheriff:

Sheriff's return.

Executed this writ in the county of Saint Louis January 13th, 1850, by delivering a copy of the same with the petition as furnished by the clerk, William Risley, the defendant.

JAMES CASTELLO, *Sheriff.*
By THOMAS SHADBURNE, *D. C.*

5 And on the tenth of March, 1858, there was filed in the office of the clerk of the Saint Louis Land Court the following answer herein, to wit:

Answer.

The defendant, William Risley, for answer to the petition of the plaintiff, says that—

1st. The plaintiff, at the time of the commencement of this suit, was not entitled to the immediate possession of the parcel of land described in the petition.

2nd. The defendant did not, on the fifth day of January, or any other day since that time, unlawfully withhold from the plaintiff the possession thereof; wherefore he prays to be dismissed, with his costs.

By att'y, E. BATES.

Edward Bates, attorney and agent for the defendant, being duly sworn, says that the matters stated in the above answer he believes to be true.

EDW'D BATES.

Sworn to and subscribed before me this 10th day of March, 1858.
C. A. MANTZ, *Clk.*

And afterwards, and on 10th of June, 1858, there was filed in said court the following motion to set aside non-suit and for a new trial.

6 *Motion to set aside non-suit.*

And the plaintiffs in the above cause come, and on leave of the court first had and obtained, move the court to set aside the non-suit herein, and grant a new trial for the following reasons, to wit:

First. Because the court erred in compelling the plaintiffs to elect the title under which they mostly relied to establish their right to the possession of the premises in controversy.

Second. Because the plaintiffs on trial were deprived by the court of the lawful privilege of introducing all of their titles and evidence which they had a lawful right to introduce, to establish their right to the possession of said premises.

Third. Because the court refused to admit the plaintiffs to show more than one chain of title to the premises in controversy.

Fourth. Because the court refused evidence offered by the plaintiffs which ought to have been admitted.

Fifth. Because the court refused to allow the plaintiffs the privilege of introducing all of their testimony before being compelled to elect the chain of title on which they would rely.

Sixth. Because the court refused to admit the deed in evi-
7 dence from the city of Saint Louis to the plaintiffs, which was offered in evidence.

Seventh. Because the court sustained objections of the defendant to evidence offered by the plaintiffs, which said objections ought to have been overruled.

Eighth. Because the court sustained the motion of the defendant to compel the plaintiffs to elect before going into trial on what title they would rely.

Ninth. Because court had no right to compel the plaintiffs to elect on what title they would rely.

Tenth. Because the court granted motions made by the defendant, which ought to have been refused.

Eleventh. Because the plaintiffs had a lawful right to introduce any lawful evidence to show their right to the possession of said premises.

Twelfth. Because the court erred on many other respects, too numerous to mention to be herein particularly specified and set forth.

E. CASSELBERY,
Attorney for the Plaintiffs.

8 And on the 26th day of June, 1858, there was filed in said court the following abstract:

Abstract for court.

The plaintiffs claim under two distinct titles. One is by assignment in the usual form, in the year 1855, from the United States to

the inhabitants of Saint Louis for the support of schools; the other is by virtue of a conveyance from the city of Saint Louis, dated in December, 1857. The city claims under an act of the legislature of March 3d, 1851, granting all the right of the State in the land to the city. The State claimed the land as being in the river at the time Missouri was admitted into the Union, and by virtue of the act of admission the title to all land then in the navigable rivers within the State was transferred to the State.

E. CASSELBERRY,
Att'y for Plaintiff.

And on the eleventh day of January, 1861, the following application for a change of venue was filed in said court.

Application for change of venue.

The plaintiffs, a body corporate and politic, state that the judge of this court is prejudiced against said corporation, and that said plaintiffs have just cause to believe that they cannot have a fair trial in this court in said cause, on account of said prejudice.
9 The plaintiffs, therefore, ask for a change of venue in said cause to some other court, where a fair trial can be had.

E. WYMAN, *President.*

STATE OF MISSOURI, *County of Saint Louis, ss:*

Edward Wyman, the president of the foregoing-named board of directors, and the agent of said board, makes oath, and says the above application and the matters therein as stated he believes to be true.

EDWARD WYMAN, *President.*

Subscribed and sworn to before this 10th day of January, 1861.
EDWARD N. TRACY, *Cl'k.*

And on the 18th day of April, 1861, there was filed in the office of the clerk of the Saint Louis Circuit Court, on change of venue from the Saint Louis Land Court, a copy of the record entries in said case.

Land Court.

Copy of record entries.

STATE OF MISSOURI, *County of St. Louis ss:*

Be it remembered, that at the St. Louis Land Court for the county of Saint Louis, at the March term, 1858, thereof, begun and held in the court-house, in the city of Saint Louis, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-
10 eight, being the third day of said term of said court, among other proceedings the following were had, to wit:

Ans. filed.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools *vs.* WILLIAM RISLEY. } Answer filed.

And afterwards the following proceedings were had in this cause, to wit:

Jury trial.—Nonsuit, with leave to move the same aside.

WEDNESDAY, *June 9th*, 1858.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools *vs.* WILLIAM RISLEY. } Non-suit.

Now, at this day, come said parties, by their respective attorneys; and thereupon also come a jury, to wit: Levi Ashbrook, Thomas Fagen, L. J Cooper, James McLard, James Austin, Julius Kurlbaum, Owen Callahan, Martin P. Estel, Joseph Preston, Henry G. Whitney, and Malcolm Blin, twelve good and lawful men, who, being duly elected, tried, and sworn, well and truly to try the issues joined between the parties herein, and a true verdict render according to the evidence, therefore the trial progressed; and thereupon the plaintiffs take a non-suit, with leave to move to set the same aside.

11 It is therefore ordered and adjudged by the court that the plaintiffs take nothing by their suit, but that the defendant go hence without day, and recover of said plaintiffs his costs and charges herein expended and have execution therefor.

And afterwards the following further proceedings were had in this cause, to wit:

New trial filed.—Overruled.

THURSDAY, *June 10th*, 1858.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools *vs.* WILLIAM RISLEY. }

Motion to set aside non-suit and for new trial filed in this cause.

And afterwards the following further proceedings were had in cause, to wit:

Motion.—New trial overruled.

SATURDAY, *June 26th*, 1858.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools *vs.* WILLIAM RISLEY. }

Now, at this day, the motion heretofore filed in this cause to set aside non-suit and for a new trial is submitted to the court; and the

12 court having heard, and being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled.

And afterwards, "to wit," on the same day, the following further proceedings were had in this cause, to wit:

Bill of ex. filed.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Bill exceptions filed in this cause.

And afterwards the following further proceedings were had in this cause, to wit:

Aff't for appeal filed.—Appeal granted.

WEDNESDAY, *June* 30*th*, 1858.

THE BOARD OF PRESIDENT AND DIRECTORS OF the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Now, at this day, comes said plaintiff, by its attorney, and files herein an affidavit for an appeal, and on its motion an appeal to the Supreme Court is granted from the decision herein rendered.

And afterwards, "to wit," on the same day, the following furthe proceedings were had in this cause, to wit:

13 *Waiver of bond.*

THE BOARD OF PRESIDENT AND DIRECTORS of the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Waiver of bond filed in this cause.

And afterwards, "to wit," in vacation, on Wednesday, August 24th, 1859, the following further proceedings were had in this cause, to wit:

Judgment Supreme C't filed.

THE BOARD OF PRESIDENT AND DIRECTORS of the Saint Louis Public schools
vs.
WILLIAMS RILEY.

Judgment of the Supreme Court filed in this cause.

And afterwards "to wit," in vacation, on Thursday, September 1st, 1859, the following proceedings were had in this cause, to wit:

Opinion of Supreme Court filed.

THE BOARD OF PRESIDENT AND DIRECTORS of the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Opinion of the Supreme Court filed in this cause.

And afterwards the following further proceedings were had in this cause, to wit:

October term, 1859.

Con't.

TUESDAY, *November* 15*th* 1859.

THE BOARD of PRESIDENT AND DIRECTORS of the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Continued by consent.

14 And afterwards the following further proceedings were had in this cause, to wit:

March term, 1860.

Continued.

MONDAY, *March* 26*th*, 1860.

THE BOARD OF PRESIDENT AND DIRECTORS of the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Continued

And afterwards the following further proceedings were had in this cause, to wit:

October term, 1865.

MONDAY, *October* 2*nd*, 1860.

THE BOARD OF PRESIDENT AND DIRECTORS of the Saint Louis Public Schools
vs.
WILLIAM RISLEY.

Now, at this day, it is ordered by the court that this cause be laid over for future action at this term.

And afterwards the following further proceedings were had in this cause, to wit:

Change of venue.

THE BOARD OF PRESIDENT AND DIRECTORS of Saint Louis Public Lands
vs.
WILLIAM RISLEY.

FRIDAY, *January 11th*, 1861.

Now, at this day, come said plaintiffs, by their attorney, and the petition of said plaintiff being filed in this cause, asking for a
15 change of venue thereof notice of the application herein being accepted by the attorney for defendant, said petition, containing the allegation that the judge of this court is prejudiced against said corporation, and that said plaintiffs have just cause to believe that they cannot have a fair trial in this court on account of said prejudice, and said petition being duly verified by affidavit, is submitted to the court; it is thereupon, on motion of plaintiffs' attorney, ordered by the court, that the venue of this cause be changed according to law to the Circuit Court of the county of Saint Louis.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, Edward N. Tracy, clerk of the Saint Louis Land Court within and for said county, certify the foregoing transcript to be a true and complete copy of the record entries in the case of the Board of President and Directors of the Saint-Louis Public Schools, plaintiffs, and William Risley, defendant, as tully as the same remains of record in my office.

In testimony whereof, I here set my hand and affix the seal of our said court, at office, in the city of Saint Louis, this 13th day of January, A. D. 1861.

16 [SEAL.] EDWARD N. TRACY, *Clk.*

And on the 17th day of February, 1863, the following stipulation was filed, in said court:

Stipulation.

The parties in the above cause make the following agreement, in order to facilitate the trial in said cause:

First. That the defendant may read in evidence the deposition of Francois Noise dit Jacques Labbie, taken in a case in the Saint Louis Land Court, wherein the said board was plaintiff, and Gottlieb Schoenthaler was defendant.

Second. That the plaintiff may read in evidence the deposition of William Boly, taken in a case in the Circuit Court of Saint Louis county, wherein said board was plaintiff, and James Howard, Andrew Donavan, and William D. Quigley were defendants.

Third. That the defendant was in the possession of the premises in controversy in this suit at the time of the commencement of the same,

and that, if the plaintiffs should recover in the suit, their damages shall be one cent, and such monthly value of the rents and profits of said premises from the time of the finding of the verdict of the
17 jury to the time of the deliverance of the possession of said premises to the plaintiff, shall be such an amount as the jury shall deem reasonable and just.

Fourth. That the testimony of the witnesses in the two abovementioned depositions shall be subject to the same objections for irrelevancy, incompetency, and incredibility that the testimony of said witnesses would be subject to if in conrt personally present testifying.

Fifth. That a certified copy of the plat in the United States recorder's office, known as "Chouteau's Platt," of the old town of Saint Louis may be read in evidence by either party, subject to objections by either party for incompetency, irrelevancy, and incredibility.

E. CASSELBERRY,
Attorney for the Plaintiffs.
R. M. FIELD, *for Defendant.*

And at the February term, 1864, and on the 27th day of April, 1864, the following further proceeding were had herein:

Ejectment.

Now come the parties, by their respective attorneys, and also a jury, to wit: John Dempsey, John A. Bauer, Cyrus W. Gray, Bernard Loger, James Needham, Joseph M. Mill, Michael Coyle, Charles Durring, Clemens Korterman, Henry Manister, Daniel Glas-
18 gow, and Franz Nassel, twelve good and [and] lawful men, who being duly elected, tried and sworn, the issues herein joined well and truly to try the trial progress, and by consent of parties John Dempsey, one of the jurors, is excused and discharged from further service as a juror; and by like consent the trial progresses with the eleven remaining jurors, but not being finished, is laid over until to-morrow.

And at the same term, and on the next day, the following further proceedings were had herein:

Ejectment.

Now again come the parties, by their respective attorneys, and also the remaining eleven jurors empannelled and sworn herein, and the trial progresses; and being finished, the jurors aforesaid, upon their oaths aforesaid, say they find the issues joined in favor of the defendant. It is therefore considered by the court that the plaintiffs take nothing by their suit in this behalf; but that the defendant go thereof without day, and recover of the plaintiffs his costs and charges in this behalf expended and have execution therefor.
19 And on the 30th day of April, 1864, the following motion for a new trial was filed:

Motion for new trial.

And the plaintiffs come and move the court to set aside the verdict of the jury herein, and grant a new trial for the following reasons:

First. Because the court erred in not giving the instructions to the jury which were asked for by the plaintiff, and refused by the court.

Second. Because the court erred in giving the instructions to the jury which were asked for by the defendants and given by the court.

Third. Because the verdict of the jury is contrary to evidence.

Fourth. Because the verdict of the jury is contrary to law.

Fifth. Because the verdict of the jury is against both law and evidence.

Sixth. Because the verdict of the jury is contrary to the instructions of the court.

Seventh. Because the verdict of the jury is against the weight of evidence.

Eight. Because the court erred in excluding evidence offered by the plaintiff which ought to have been admitted.

Ninth. Because the court erred in admitting evidence for the defendant which ought to have been excluded.

20 Tenth. Because the proceedings of the court and jury in the trial of the above cause will, in many other respects, too numerous to be particularly mentioned, contrary to law, evidence, and justice.

E. CASSELBERRY,
Attorney for Plaintiffs.

And at the same term, and on the 3d day of May, 1864, the following further proceeding was had herein:

Mo. new trial overruled.

The plaintiffs' motion to set aside the verdict of jury and to grant a new trial herein, being heard and fully considered by the court, it it is ordered and adjudged by the court that the said motion be, and the same is hereby, overruled.

And on the same day, and on the 10th of May, the following further entry was made herein:

The plaintiffs file a bill of exceptions; and the defendant, waiving an affidavit for an appeal, on motion of the plaintiffs, an appeal is allowed them to the Supreme Court from the judgment herein rendered.

Said bill of exceptions is as follows:

Bill of exceptions.

21 Be it remembered, that on the trial of the above-entitled cause the plaintiff introduced and read in evidence before the jury the following testimony, to wit:

1st. The incorporation of the town of Saint Louis, made by the Court of Common Pleas of Saint Louis, in the year 1809, in words and figures following to wit, (here insert it.)

Copy ordinance, incorporating town St. Louis.

COMMON PLEAS COURT,
Thursday, November 9th, 1809.

On petition of sundry inhabitants of the town of St. Louis, praying so much of said town as is included in the following limits be incorporated, to wit: Beginning at Antoine Roy's mill, on the bank of the Mississippi, thence running sixty arpens west; thence south on said line of sixty arpens in the rear until the same comes to the barrier Denoyer; thence due south until it comes to the Sugar Loaf; thence due east to the Mississippi; from thence by the Mississippi to the place first mentioned; the court having examined the said petition and finding that the same is signed by two-thirds of the tenable inhabitants residing in said town, order the same to be incorporated and the metes and bounds to be surveyed and marked, and a plat thereof filed of record in the clerk's office, and David Delaney and William C. Carr are appointed commissioners to superintend the
22 first election of five trustees in pursuance of the law.

STATE OF MISSOURI, *County of Saint Louis, ss*:

I, William I. Hammond, clerk of the Circuit Court within and for the county aforesaid, certify the foregoing to be a true and correct copy of the incorporation of the town of Saint Louis, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said Circuit Court, at the office in said city of Saint Louis, this 1st day of August, 1854.

[SEAL.] WILLIAM J. HAMMOND, *Cl'k.*

2nd. The out-boundary of the town (now city) of St. Louis, of December 8th, 1840, commonly called plat X, purporting to be established according to the first section of the act of Congress of June 13th, 1812. It is agreed that said outboundary need not be herein inserted, but the same or a duly certified copy thereof from the proper office may be used and read in the Appellate Courts in the same manner and with like effect as if herein inserted.

3rd. School assignment No. 400, dated December 10th, 1855, in words and figures following, to wit:

Assignment No. 400.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
23 *Saint Louis, December, 10th*, 1855.

The piece of land below platted and described has been surveyed, on the 6th day of December, 1855, by Joseph Indest, deputy surveyor, pursuant to instructions from the office, dated the 3rd day

of the same month, and under instructions from the commissioner of the General Land Office, of the 20th August, 1835, 15th January and 18th February, 1839, 5th January, 1843, 17th October, 1849 and 28th June, 1851, it is hereby designated and set apart to the town, (now city) of St. Louis, for the support of school therein, in conformity with the second section of the act of Congress, approved on the 26th May, 1824, entitled "An act supplementary to act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled "An act making further provision for settling the claims to land in the Territory of Missouri." The said piece of land hereby designated and set apart, as aforesaid, is situated within the bounds of survey directed to be made by the 1st section of the act of the 13th of June, 1812, aforesaid, so as to include the town lots, out-lots, common field-lots, and commons of the town of Saint Louis, and is also within the limits of [of] the said town of Saint Louis, as it stood incorporated on the 13th June, 1812, and does not, together with all other lands
24 designated and set apart to the town of Saint Louis for the support of schools under the aforesaid 2nd section of the act of Congress of the 26th of May, 1824, amount to one twentieth of the whole lands included in the general survey directed to be made of said town of St. Louis by the aforesaid 1st section of the act of Congress of the 13th June, 1812. The said piece of land was not, so far as the records of this office show, rightfully owned or claimed by any private individual on the said 13th day of June, 1812, nor was it held as common belonging to the said town of Saint Louis, neither has it been reserved by the Prsident of the United States for military purposes.

[Here follows map marked page 25.]

25 *Description.*

Beginning at the intersection of the southwestern edge of Lombard street with the southeastern edge of Main street, as established under an ordinance of the city of St. Louis, dated the second day of March, one thousand eight hundred and fifty-one, and numbered two thousand five hundred and forty-six, said intersection being the northern corner of the survey one hundred and seventy-one feet and seven
26 inches south, fifty-nine degrees and eleven minutes east, from the intersection of the said southwestern edge of Lombard street with the southeastern edge of Main street, as it formerly existed; thence south fifty-nine degrees and eleven minutes east, with the southwestern edge of Lombard street, the northeastern boundary of this survey three hundred and twenty-three feet and eight inches, to a stake set in the westerly line of Front street, the eastern corner of this survey; thence south seventeen degrees west, with the westerly line of Front street, the southeastern boundary of this survey, two hundred and seventy-four feet and three inches, to a point on the rocks piled on the dike on Hazel street, the southern corner of this survey; thence north fifty-eight degrees and forty-one minutes west, with the northeastern edge of Hazel street, the southwestern

boundary of this survey, three hundred and fifty-feet and eight inches, to a stake at the intersection of the northeastern edge of Hazel street with the southeastern edge of present Main street, the western corner of this survey. From this corner, the point of intersection of the northeastern edge of Lombard street with the southeast-
27 ern edge of former Main street, is distant two hundred and fifty-six feet and eleven inches; thence north twenty-three degrees and fifteen minutes east, with the southeastern edge of the present Main street, and northwestern boundary of this survey, two hundred and sixty-five feet, to the beginning corner.

This survey, which is numbered four hundred, of the series of St. Louis lands, being block number eight, eight hundred and fifty-six, of the city of St. Louis, situated in township forty-five, north of the base line, range seven east, of [of] the fifth principal meridian, in the State of Missour, contains eighty-eight thousand nine hundred and fifteen square feet, equal to two acres and four hundredths of an acre, (2.0412 acr's) of land.

JNO. LOUGHBOROH,
Surveyor General.

4th. An act of the legislature of the State of Missouri, approved Nov. 23rd, 1857, entitled "An act authorizing the settling of conflicting claims to certain real estate in the city of St. Louis." It is agreed that said act need not be herein inserted, but may be referred to and read in the Appellate Court from the statute book, in the same manner and with like effect as if herein inserted.

5th. A certain deed from the city of Saint Louis to pl'ff,
28 dated 26th December, 1857, in words and figures following, to wit:

Deed from City of St. Louis to plaintiff.

This quit-claim deed, made and entered into this twenty-sixth day of December, eighteen hundred and fifty-seven, between the City of Saint Louis, party of the first part, and the Board of Presidend and Directors of the Saint Louis Public Schools, party of the second part, witnesseth: That whereas, by the first section of an act passed by the general assembly of the State of Missouri, on the twenty-third day of November, eight hundred and fifty-seven, entitled "An act authorizing the settling of conflicting claims to certain real estate in the city of Saint Louis," the mayor of said city was authorized and empowered in the name of said city, to convey in fee simple, by quit-claim deed, to the said party of the second part the following described pieces and parcels of land in said city of Saint Louis, and in the county of St. Louis and State of Missouri, to wit: Block eight hundred and fifty-five, bounded on the west by Main street, on the south by Lombard street, on the east by the wharf, and on the north by Mulberry street; also block number eight hundred and fifty-six, bounded on the west by Main street, on the south by Hazel
29 street, on the east by the wharf, and on the north by Lombard

street; and also all of United States survey, number four hundred and three, (of the series of Saint Louis lands,) bounded on the west by Main street, on the south by the southern line of said survey, on the east by the wharf, and on the north by Hazel street; which said conveyance was to be made whenever the said party of the second part should convey to said city by quit-claim deed, the following described pieces and parcels of land in said city of Saint Louis, to wit:

The south half of block eight hundred and fifty-eight, bounded on the west by Main street, on the south by Rutger's street, on the east by the wharf, and on the north by the north half of said block; also block number eight hundred and fifty-seven south, bounded on the west by Main street, on the south by Convent street, on the east by the wharf, and on the north by Sycamore street; and also all that part of block number eight hundred and fifty seven north, which is not included in said survey four hundred and three, bounded on the west by Main street, on the south by Sycamore street, on the east by the wharf, and on the north by said survey; and whereas said party of the second part has, according to the provisions of the first
30 section of said act, conveyed by quit-claim deed to said city, of even date herewith, the said three pieces and parcels of land herein last mentioned and described, being the same which are required by the first section of said act to be conveyed by said party of the second part to said city of aforesaid: Now, therefore, the said city of Saint Louis, by John M. Wimer, the mayor thereof, acting under and by virtue of the authority of said act of the general assembly, for and in consideration of the premises and of said conveyance made by the said party of the second part to the said party of the first part, as aforesaid, the receipt whereof is hereby acknowledged, does by these presents, remise, release, and forever quit claim and convey unto the said parties of the second part, and to the successors and assigns forever of said party of the second part, all of the right, title, interest, estate, claim, and demand of said city of Saint Louis, of, in, and to the said three pieces and parcels of land herein first mentioned and described, to wit: Block eight hundred and fifty-five, bounded on the west by Main street, on the south by Lombard street, on the east by the wharf, and on the north by Mulberry street; also block number eight hund and fifty-six, bounded west by
31 Main street, on the south by Hazel street, on the east by the wharf, and on the north by Lombard street; and also all of United States survey, number four hundred and three, (of the series of St. Louis land,) bounded on the west by Main street, on the south by the south by the southern line of said survey, on the east by the wharf, and on the north by Hazel street.

In testimony whereof, I, John M. Wimer, mayor of said city of Saint Louis, by virtue of the authority in me vested as such mayor, by said act of the general assembly of said State, have hereunto set my hand and seal, and have caused the corporate seal of said city to be hereunto affixed; and the register of said city, Joel G. Harper,

has attested the same under said corporate seal the day and year first aforesaid.

[SEAL] JOHN N. WIMER, *Mayor.*

Attest:

[SEAL.] J. G. HARPER, *City Register.*

STATE OF MISSOURI, *County of the St. Louis, ss*:

Be it remembered, that on the twenty-eighth day of December,
32 A. D. 1857, before me. the undersigned, a notary public within and for the county and State aforesaid, came John M. Wimer, who is personally known to me to be the same person who executed the foregoing deed as mayor of the city of Saint Louis, and he acknowledged the same to be the act and deed of the city of Saint Louis, and his act and deed as mayor of said city, for the purposes therein mentioned.

Witness my hand and notarial seal the day and year last aforesaid.

SAMUEL A. BENNETT,
Notary Public.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned recorder in and for said county, certify that the foregoing instrument of writing was filed for record in my office January 2nd, 1858, and is truly recorded in book 196, page 225.

Witness my hand and official seal the date aforesaid.

[SEAL] C. KEEMLE, *Recorder.*

6th. A deed from the plaintiff to the city of Saint Louis, dated 26th December, 1857, in words and figures following, to wit:

33 *Deed from plaintiff to City St. Louis.*

This quit-claim deed, made and entered into this twenty-sixth day of December, eighteen hundred and fifty-seven, between the Board of President and Directors of the Saint Louis Public Schools, party of the first part, and the City of Saint Louis, party of the second part. witnesseth: That whereas by the first section of an act, passed by the general assembly of the State of Missouri, on the twenty-third day of November, eighteen hundred and fifty-seven, entitled An act authorizing the settling of conflicting claims to certain real estate in the city of Saint Louis, the mayor of said city was authorized and empowered, in the name of the said city, to convey in fee-simple by quit-claim deed to said board the following described pieces and parcels of land in said city of St. Louis, and in the county of Saint Louis, and in the State of Missouri, to wit: Block eight hundred and fifty-five, bounded on the west by Main street, on the south by Lombard street, on the east by the wharf, and on the north by Mulberry street; also block number eight hundred and fifty-six, bounded on the north by Main street, on the south by Hazel street, on the east by the wharf, and on the north by Lombard street; and also all of United States survey, number four hundred and three, (of

the series of Saint Louis lands,) bounded on the west by Main
34 street, on the south by the southern line of said survey, on the east by the wharf, and on the north by Hazel street; which said conveyance was to be made whenever said board should convey to said city, by said quit-claim deed, the following described pieces and parcels of land in said city of Saint Louis, to wit:

The south half of block eight hundred and fifty-eight, bounded on the the west by Main street, on the south by Rutgers street, on the east by the wharf, and on the north by the north half of said block; also block number eight hundred and fifty-seven south, bounded on the west by Main street on the south by Convent street, [street,] on the east by the wharf, on the north by Sycamore street; and also all that part of block, numbered eight hundred and fifty-seven north, which is not included in said survey four hundred and three, bounded on the west by Main street, on the south by Sycamore street, on the east by the wharf, and on the north by said survey; and whereas said city has, according to the provisions of the first section of said act, conveyed in fee-simple, by quit-claim deed, to said board said theee pieces or parcels of land herein first mentioned and described, being the same which are required by the first
35 section of said act, to be conveyed by said city to said board as aforesaid: Now, therefore, the said party of the first part, for and in consideration of the premises and of said conveyance, made by the said city to said board as aforesaid, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quit claim and convey unto the said party of the second part, and to the successors and assigns forever of said party of second part, all the right, title, interest, estate, claim, and demand of said party of the first part, of, in, and to the said three pieces and parcels of land herein last mentioned and described to wit: The south half of block eight hundred and fifty-eight, bounded on the west by Main street, on the south by Rutgers street, on the east by the wharf, and on the north by the north half of said block; also block number eight hundred and fifty-seven south, bounded on the west by Main street, on the south by Convent street, on the east by the wharf, and on the north by Sycamore street; and, also all that part of block, number eight hundred and fifty-seven north, which is not included in said survey four hundred and three, bounded on the west by Main street, on the south by Syramore street, on the east by the wharf, and on the north by said survey.

36 In testimony whereof, the president of said board has hereunto set his hand and affixed the corporate seal of said board—the secretary thereof has attested the same under said seal—the day and year first aforesaid.

W. W. GREENE, *President.*

[SEAL.] Attest: C. E. P. JOHNSON, *Secretary.*

STATE OF MISSOURI, *County of Saint Louis, ss*:

Be it remembered, that the foregoing named William W. Greene, the president of the foregoing-named Board of Directors of the Saint

Louis Public Schools, who is personally known to me to be the same person whose name as president of said board is subscribed to the foregoing deed as a party thereto, this day personally appeared before me and acknowledged the same to be the act and deed of said board, and his own act and deed as president thereof.

Given under my hand this thirty-first day of December, eighteen hundred and fifty-seven.

PETER W. JOHNSTONE,
Justice of the Peace of said County of Saint Louis.

Filed and recorded January 2nd, 1858.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned recorder for said county, certify that the
37 foregoing is a true copy of a deed from St. Louis Public Schools to City of Saint Louis, the certificate of acknowledgment, and date of filing and recording, as the same remains of record in my office in book 196, page 221.

Witness my hand and official seal this 16th day of March, 1864.

[SEAL.] A. C. BERNONDY, *Recorder.*
Per J. CONRAD, *Dy.*

7th. An act of the legislature of the State of Missouri, entitled "An act about swamp lands in St. Louis county," approved March 3rd, 1851. It is agreed that said act last mentioned need not be herein inserted, but may be referred to and read from the statute book in the Appellate Courts, in the same manner and with like effect as if herein inserted.

8th. Act of Congress of June 13th, 1812, entitled "An act making further provision for settling the claims to land in the territory of Missouri;" also act of Congress of May 26th. 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to lands in the Territory of Missouri;'" also act of Congress of January 27th, 1831, entitled "An act further supplementary to the act entitled 'An act making
38 further provision for settling the claims to land in the Territory of Missouri,'" passed the thirteenth day of June, one thousand eight hundred and twelve. It is agreed that the three acts of Congress above-recited need not be herein inserted, but may be referred to and read in the Appellate Courts from the statute book, in the same manner and with like effect as if herein inserted.

9th. A stipulation between the parties on file, in words and figures following, to wit:

Stipulation.

(For stipulation see pages 13 and 14 of this transcript,) [this transcript, pages 16, 17, and 18.]

Plaintiffs here rested their case.

Defendant read as evidence to the jury the following testimony, and introduced the following named witnesses:

1st. The deposition of John Pourcelli, taken in June, 1863, in the words and figures following, to wit:

Deposition of John Pourcelli.

John Pourcelli, of lawful age, being sworn and examined on the part of the defendant, deposeth and saith: I was 79 years old last March. I was born in Saint Louis. I lived in Saint Louis till
39 1821. I knew in Spanish time the lot which is now block No. 44. In Spanish time the river was the eastern boundary of said block. Madame Charleville occupied the northern half of that block. I was perhaps 15 or 16 years old when I first knew Madam Charleville as the occupant of that lot. At that time she was a widow, and her children lived with her; Francois Tayon married her daughter, and lived with her there. There was a house and barn on the lot. When I first knew the house and barn they had the appearance of being old; there was a fence around the lot; there was a little passage-way between the eastern fence and the river, perhaps 10 feet or such a matter. An old black man named Leveiler occupied the south half of the block. The lot of Leveiler extended as far east as the lot of Madam Charleville; there was the same passage way east of Leveiller's lot. The lots were at least 300 feet deep when I first knew them. When I was say 18 years old the fence had to be moved west, because the passage-way had all fallen in the river. There were garden and fruit trees on the block on both lots. At that time the street stopped at where Plum street now is, and below there they had to get along the best way they could along the passage-way.
In 1803 I came up from New Orleans, and helped cordell a
40 boat along this very lot. I was customary in those times to use the bank of the river anywhere when it became necessary to cordell boats up the river.

Cross-examination.

Block No. 44 was inside of the old town of Saint Louis as it was in Spanish times. This block did not, in Spanish times, extend as far eastward as where Main street now is. The passage-way spoken of was on the top of the river bank. In Spanish times this passage was about 10 feet wide. The public had the right to pass there the same as the people have to pass on a street or alley.

Re-examination.

There was a passage-way along the bank of Plum street, but it was regular in width, some owners being willing to give a way for carts, and some only for persons.

his
JOHN × POURCELLY.
mark.

2. John B. Hortiz, of lawful age, being sworn, testified as follows:

Testimony of J. B. Hortiz.

I reside in the city of Saint Louis; am 72 years of age; was born in St. Geneveve. I remember old Madam Charleville. When I first knew her I lived on Second street at the corner of Almond, in
41 the city of Saint Louis; knew her when she lived on the corner of Lombard and Second streets. The first I knew particularly of block 44 was in 1808. I lived at that time in block 43. Francis Tayon lived the cross street called Lombard street, and on block 44; he married Madam Charleville's daughter. He had a house and barn on this part of the block, which he occupied; also a garden and fruit trees. There was a fence all round the lot except on the river bank. The fruit trees on the lot were pretty large. The improvements I speak of must have been standing there fifteen years previous to 1808. An old black man and woman named Lavielle lived on the south half of the block in 1808. There were fruit trees on this portion of the block also. I first saw the improvements prior to 1803. I used to go there when a little boy. Levielle and Tayon's lot ran to the river; was never any street between the east end of these lots and the bank of the river. The ends of the fences would sometimes have to be moved back on account of the abrasion or falling in of the river bank. Defendant went into possession of property twenty odd years ago. The river for some prior to 1844 occasionally slightly receded from the east bank in low water; but, in consequence of high water in 1844, the ground after-
42 wards made rapidly eastwardly; the accumulations were also caused by the material used in constructing cross-streets out into the river. I knew Joseph Charleville; he was a brother-in-law of Tayon.

On cross-examination the witness stated: My family moved into block 43 in 1808. Block 43 is next above block 44. I was born in St. Genevieve. I came to St. Louis when I was 1 or 2 months old, as I have been informed. In 1806 we moved to the country, and returned to the city in 1808 and moved on to block 43. Arthur Park married Madame Charleville. She died a long while after her marriage with Park; her maiden name was Pelagie Tayon. She married Charleville, and then Park. At the change of the government Madame Charleville lived on the corner of 2nd and Almond streets. There was no passing east of block 44; was no public road there. The owners of the ground along there would use a passway for their own private purposes. Main street ran as far as Plum street in Spanish times. On some of the lots the fences next the river were taken away in order to have a passway, and this was the condition of all the lots. The river wore away the bank until the flood of 1844. Previous to 1844 steamboats were in the habit of running close to the banks.
43 The ground between the bank and Duncan's island never began to fill up until the cross streets were projected into the

river; was no passage way except under the cliff of rock which lined the river bank, from Plum street up to Cherry street. The lots in places along the river bank ran to the edge of the rock. When river was low was a passage-way under cliffs; when high, nothing could travel on the path; when the water was up one had to walk on the edge of the cliff and climb the fences.

3d. Peter D. Barada, being sworn, testified as follows :

Barada's testimony.

I am sixty-four years old; was born in Saint Louis county; in my childhood often came to the city; remember the lot once occupied by Francis Tayon; first remember of passing it under the east end in 1806, in a canoe; in company with old Peter Delore as early as 1809–10. I saw a house and barn on the lot and a fence round it; there might have been a garden on it; was no orchard; black man Levielle occupied the south half of the block; the fencing was trifling; were some fruit trees on Levielle's part. Tayon's building didn't seem old; might have been some nine or ten years old.
44 Tayon lived and died there. Tayon's fence ran to near the river; was a kind of passage way between the fence and river. The depth of Tayon and Levielle's lots, when I first remember them, was some two hundred and odd feet from Second street to the river.

Cross-examination.

The witness stated: I have no exact recollection of the river bank until about the year 1815. About 1806 there was a passway reaching from the street above Hazel street up to Plum street, on which people could walk or ride. From Hazel to Lombard street the pathway was not so broad. From where the Iron Mountain railroad depot is now, or a block or two above, a rock bluff begun and ran as far Walnut street; there were no rocks of any consequence between Walnut and Market streets. From Market street a bluff of rocks ran up to about Horse creek; at some places a cart could pass between the bluff and the river. There was no way of passing between the bluff aud the river except at low water.

4th. David Adams, being sworn, testified as follows :

Testimony of D. Adams.

My age is 67 years; I was born here in St. Louis; knew Francis Tayon; he lived on corner of Lombard and 2nd streets, in block 44. I can remember as far back as 1806 or 1807. There were a
45 house, barn, well, and fence on Tayon's lot; can't say how old the house was; was an old looking house at that time. There were large old apple trees on the lots over 15 years old. An old negro man and woman occupied the south half of the block. The fence of Tayon's lot ran to back of the river when I first knew it. He had

to move the fence back; when he did so he left a space for a passway for his own convenience. To go to Vide Poch, one had to go down Second street; never was a road, to my knowledge, between the block and the bank of the river from Plum to Cedar streets. There was a pathway which admitted a single cart to pass.

On cross-examination witness testified as follows: The old negro woman, Lavielle, is dead; think she was alive in 1825; the old negro woman, Lavielle, died at an early day; can't tell which pretended to own the lot, Madame Charleville or Tayon. Tayon lived on the lot next to the black man; from the mouth of the creek there was a bluff bank extending up to Cedar street; at corner of Poplar was a bench of rocks extending up to Almond street; at Elm street was a bench of rocks extending up near to Walnut street; above Market street there was a ledge of rocks; at low water one could pass between the rocks and the river. At my first remembrance of the
46 river down about the block in question (44) the river bank was in the habit of falling in; the ground has been making into the river from the original bank since 1844; where now Main street is, in that part of the city was once the bed of the river; the corporation has been extending the streets out into the river since 1853. In order to get along between the lots in that part of the town of Saint Louis and the river, one had to go in a zigzag direction; part of Duncan's island remains; one portion of it is where Main street is now.

Direct examination being resumed, witness testified as follows: The old Spanish barn stood right on the edge of the river bank, when the river was high, could not get round it on the east side.

5th. Mrs. Jane Harvey being sworn, testified as follows:

Testimony Jane Harvey.

I am 72 years old; am Francis Cailloux's daughter; was born at the corner of Plum and Second street, in Saint Louis; spent my youth in that neighborhood. Knew old Mrs. Charleville; knew well Francis Tayon. Mrs. Charleville lived, when I first knew her, on Second street. Francis Tayon lived on the corner of Lombard and 2nd street; when I first knew Tayon was between 10 and 12 years old. Francis Tayon had a house near the center of the block, and in a barn near
47 the river; he had fruit trees on his lot; the house and barn were tolerably old, when I first knew them; trees were winter apple trees; when I first knew Tayon's lot it was fenced on three sides; next to the river there was no fence; the bank was so steep the fences ran to the river; knew the negro man and woman; they owned part of the same block; their fence also ran to the river; there was no road from Plum street down east of the lots. I used to visit Mr. Tayon and Madame Ortiz. I lived on the other side of the street opposite; Tayon went there to live when I was 15 or 16 years old; have always resided in the city of St. Louis.

On cross-examination witness testified as follows: When I first saw Tayon's lot I was 12 years old. I only remember the appearance

of the river at that time from Plum street down; from Plum street down the river wore away the bank from the time I first remember it, until the flood of 1844; and from that time the river began to recede eastward, and is now much farther east than it was when I first knew it. When I first knew it people could pass along between the lots and the river; when the water was low anybody could pass along on foot who desired to do so.

48 6th. The original and also a translation of the concession of Charles Lavellle, dated March 1st, 1788, is in words and figures as follows, to wit:

Concession of Charles Lavielle, Carlos Lebette, negro Lebre.

Don Manuel Perez, capitan del regimiento de infanteria de la Louisiana, Ten'te, de gob'y commandante de esta partida occidental y distritos de los ills visti lo espuesto en el memorial presentado por Carlos Labelle, negro Libre y esclavo que fue del difunto Luis Robert con fha de veinte y seis de Febrero del coirriento ano le he concedido y concedo a titulo de propriedad para el y sus herederos y ottros que representen su derecho un terreno de soli secenta pies de fronte sobre cientoy cinquenta de profundor situado en este puebla de S'r Luis que confina por un lado.

A los herederos de Luis Ride por el otro al dominio de S. M. por detras al rio Mississippi y por su principal fronte al caurni quinque de la seyurdo calle principal a la praderia a catular, con condicion de establecerte y hacer lo valor en el termino de un and a contar desde esta fhra, y de lo contrario que dara incorporada al dominio real, debiendo estar sugets a los cargos publicos y otras que S. M. quiera impoeverte dado in St. Louis de Illinueses, a primero de marzo de mil octe cientos, ochenta yocho.

See livre terrien No. 4, page 20.

MANUEL PEREZ.

49 Minutes of the recorder of land titles, acting as commissioner under the act of Congress, entitled "An act making further provision for settling the claims of land in the territory of Missouri, passed the 13th day of June, 1812, and other acts subsequently passed.

January 2nd, 1814.

FREDERICK BATES, *Commissioner.*

Conf. O. S.

F. 194. Charles Levelle claiming 60 by 150 feet lot, St. Louis. No. 4, p. 20.

Auguste Chouteau says this lot was inhabited and cultivated from 1780 to this time. See Bates' minutes, p. 1 & 151.

50 Opinions of the recorder of land titles for Missouri Territory as to claims entered under act of 13 June, 1812, and proven before 1st January, 1814, as provided by the act of the 3rd March, 1813, comprehending also the claims in the late district of kansas, which, by act of 2nd August, 1813, were permitted to be entered until 1st January, 1814, and proven until 1st July, 1814, together with the extensions of quantity provided by 4th section of the act of 3rd March, 1813, and confirmations under the act of 12th April, 1814:

Warrant or order of survey.—Prov. Land Book 4, p. 20.
Survey.—Not platted.
Notice to recorder, by whom.—Charles Levelle, repres.
Quantity claimed.—60 by 150 ft. F.
Where situated.—194 lot in St. Louis.
Poss'n inhab't y cultivat.—Pass and inhab. prior to 1863.
Opinions of the recorder.—Confirmed 60 by 150 ft. to be surveyed.

RECORDER'S OFFICE, *St. Louis, December*, 1856.

The above is correctly transcribed from pages 1 & 9 of Book No. 1, being one of the five small books in this office, with the following endorsement on the first and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: These five small books are originals in the proper handwriting of the undersigned, being his decisions on land claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded on the books, because they have no authority until sanctioned by government.
St. Louis, Nov. 1, 1815.

FREDERICK BATES,
Recorder of Land Titles.
ADOLPH RENARD,
U. S. Recorder Land Titles in the State of Missouri.

51 OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 14 *January*, 184—.

I certify that the above is, with the attached paper, a full and correct transcript from the books, records, and documents of this office of the claim of Charles Levelle's representatives to a lot of ground in the city of St. Louis.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Translation.

Translation of the foregoing grant.

Don Manuel Perez, captain in the infantry regiment of Louisiana, lieutenant governor and commander of the western part and district of Illinois.

Having seen the statement in the petition presented by Charles Levelle, a free negro, who was the slave of the late Louis Robert, dated the 26th of February of the current year, I have conceded, and do concede to him in fee simple for him and his heirs and others who may represent his rights, a lot of sixty feet in front by one hundred and fifty in depth, situated in the town of Saint Louis, bounded on one side by the heirs of Louis Ride, on the other by his majesty's domain, on the rear by the Mississippi, add on the main front by the road which follows from the second Main street to the prairie
52 a Catalan, under the condition to settle and improve the same within the term of one year from this date; and on the contrary to remain of the domain, it being to remain liable to the public and other charges which it may please his majesty to impose thereon.

Given in St. Louis of Illinois, 1 March, 1788.

(S.) MANUEL PEREZ.

ST. LOUIS, 14 *January*, 1857.

Correctly translated.

ADOLPH RENARD.

7. The original and also a translation of the concession to Amiot.

8. Resolution and ordinance of the city of Saint Louis, of 1823, in relation to the survey of the city of Saint Louis.

9. A lithographic copy of the map made by the city surveyor, Reni Paul, in accordance with said ordinance of 1823. Before the said copy was offered it was agreed by the parties that the original map and field notes of Reni Paul, filed with the register, had been lost or mislaid, so that they could not be produced; and the defendant also proved that the said copy was a true copy by the testimony of W. H. Cozens, as hereinafter stated.

53 It is agreed that Prairie a' Catalan is identical with Carondelet.

10. Revised ordinances of 1843, page 376, concerning streets, &c.

To the offering of which, that is to say, the 6th, 7th, 8th, 9th, and 10th items of evidence, the plaintiffs, by their counsel, objected because of incompetency, irrelevancy and uncertainty, and because there is no sufficient description of the land mentioned in said papers, or either of them; which said objection was by the court overruled, to which overruling the plaintiffs by their counsel at the time excepted.

And to the offering of the 8th, that is to say, the said resolution and ordinance, the plaintiffs by their counsel objected, for the reason that the city government had not the power to bind, nor could it bind, third persons by such an ordinance; also on account of incompetency and irrelevancy; but the said objection was by the court overruled, to the overruling of which the plaintiffs at the time excepted, and all of said evidence was submitted to the jury.

It is agreed that all of said evidence, to wit, that which is marked in this bill of exceptions, 7, 8, 9, and 10, need not be recited herein, or inserted, but that the same may be referred to and
54 read in the Appellate Courts from the ordinances and papers

which were read and referred to on the trial in the Circuit Court, or from copies thereof, in the same manner and with like effect as if herein inserted.

11. William H. Cozzens, being sworn, on his oath says:

W. H. Cozzens' testimony.

I am a native of Saint Louis; am a civil engineer; learned my profession under Reni Paul. Witness looks at a lithograph map of the city of Saint Louis, and says the original of this map was made in 1823. It was one Reni Paul made of the survey of the city; the original was filed with the city register. A copy of the field-notes of said survey was also filed with the city register. The map as lithographed was constructed by myself. There was at that time no Main street south of Plum street, except what was constructed on paper, except between Plum and Cedar streets. The lithographic map is a true copy of Paul's map filed with the register.

On cross-examination the witness testified: I know block 856. There are no improvements on this block. There is a stone foundation on the northwest corner of the block. It was made in 1855 or 1856. When I superintended the construction of those cross streets in 1853 no improvements were there. Main street was commenced at that place, or the southern end of Main street was commenced in 1851. The southern end of Front street was made after 1852. Between the cross streets, extended into the river, are ponds of standing water. The heavy deposits were made there in the great rise of 1851. About two feet of deposits had been made by the rise of 1844. In 1853, no one lived on block 856. The man who made the foundation of which I have spoken became alarmed about his title to the ground and abandoned it. He obtained his title, or bought from defendant. I have known block 44 for 35 years, as also the neighboring blocks. When I first knew the ground the fences on it were built to pretty near the river bank. The inhabitants used to pile drift-wood on the space between the ends of the fences and the edge of the river bank. The inhabitants were not restrained from piling their drift wood on this space. People were not so particular those days as now; they were a different breed from the present.

12. Ordinance of the city of Saint Louis, of 1851, in relation to the opening of Main street from Plum street southward, to which plaintiffs objected, for the reason that the same is incompetent and irrelevant, which objection was by the court overruled; to the overruling of which the plaintiffs at the time objected, and said ordinance was read to the jury.

It is agreed that said ordinance need not be inserted herein, but that the same may be read in the Appellate Courts from the ordinances of 1851, or a copy thereof in the same manner, and with like effect, as if herein inserted.

13th. It is admitted that defendant, in 1851, relinquished by deed

to the city of Saint Louis, all of his rights to the streets surrounding block 856, conformably to said ordinance of 1851, but that the deed of such relinquishment is not recorded in the recorder's office of Saint Louis county.

14. Tax collector's certificate of sale of Lavielle's lot for taxes for the year 1826.

Tax collector's certificate of sale of Lavielles lot for taxes, year 1826.

I, Mackay Wherry, collector of the revenue of the city of Saint Louis, for the year of our Lord one thousand eight hundred and twenty-five, do hereby certify that George K. McGunnegle was the purchaser of a certain house and lot of ground in said city, in block number forty-four, and bounded as follows, to wit: west by second street, north by Francis Tayon, east by Pierre Loughtin, and south by south L street, containing one hundred and twenty feet in front, by one hundred and fifty feet in the rear, which said house and lot were sold by me, the said collector, on the fifth day of June,
57 one thousand eight hundred and twenty-six, to satisfy the taxes due thereon, to the city of Saint Louis, for the year eighteen hundred and twenty-five, from Francois Laveille, the person in whose name said house and lot were assessed, which, together with the per centum and costs thereon, amount to one dollar and fifty cents; said house and lot having been advertised five successive times in the Missouri Advocate and Saint Louis Enquirer, (a copy of which advertisement is hereto annexed, and made part of this certificate,) was sold agreeably to the ordinances of the city of Saint Louis, and I, the said collector, acknowledge to have received from the said George McGunnegle the sum of one dollar and fifty cents, as aforesaid, and certify that he will be entitled to a deed for the said premises, unless redeemed according to the ordinances in such case made and provided.

M. WHERRY, *Collector.*

Know all men by these presents that I, George K. McGunnegle, of Saint Louis, State of Missouri, for and in consideration of the sum of one dollar and fifty cents, to me paid by ——— ———, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, sell, con-
58 vey, and confirm unto ——— ———, all my right, title interest, and estate in and to the following described premises, situate in the city of Saint Louis, and State of Missouri, lying in block forty-four, bounded west by second streett; south by L street, now called Hazel street; east by Pierre Lengtin; north by Francis Logan, containing one hundred and twenty by one hundred and fifty feet, more or ~~less; here~~by assigning and conveying all my right, title, and interest in and to the above-described property, which I acquired by virtue of the within certificate unto the aforesaid ——— ———.

Dated this ——, at Saint Louis.

Signed, sealed, and delivered in presence of—

[SEAL.]

List of Real Estate advertised.

Said copy referred to is as follows:

A list of real estate in the city of Saint Louis, for sale for the taxes due by the owners thereof for the year 1825:

Thos. H. Benton.—1 house and lot, block 66, situated and bounded as follows: On the east by 2nd street; north by Sheepshanks; west by P. Lindell & I. Mullanphy; south by north F street—180 by 200 feet. Amount of tax, $14 02.

58 *Pierre Baribeau.—1 house and lot, block 65, situated and bounded as follows: east by Second street; north by north F street; west by Stone, Bostwick & Co.; south by Berry Metchum—165 by 115 feet. Amount of tax, $2 37½.

*Samuel Berry.—1 vacant lot, block 39, situated and bounded as follows: east by First street; south by Robert; west by Joseph Papin; north by M. Tesson—45 by 50 feet. Amount of tax, 18¾ cents.

Geneveive Brazeau.—1 house and lot, block 43, situated and bounded as follows: east by Mississippi street; south by K street; west by M. Hortise; north by L. A. Benoist—60 by 150 feet. Amount of tax, 31¼ cents

*Bizallou.—1 house and lot, block 41, situated and bounded as follows: east by Main street; north by south G street, by Michael Marlie, jr.; south by Pierre Guirette—120 by 150 feet. Amount of tax, $1 12½.

Pierre Bonami.—1 vacant lot, block 129, situated and bounded as follows: west by Seventh street; north by Eulalie Guilant; south by J. C. B. Lucas—57 by 135 feet. Amount of tax, 37½ cents.

Mary Brown, daughter of Wm. B.—1 house and lot, block 76, situated and bounded as follows: west by Fourth street; north by south G street; east by Lambert Lajou; west by Russell Farnham—70 by 150 feet, Amount of tax, 37½ cents.

John Bright.—¾ of 1 house and lot, block 17, situated and bounded as follows: east by Mississippi; south north by H street; west by J. E. Tholosen; north by N. Boismenue—45 by 60 feet. Amount of tax, $13 12½.

Alfred Crutzinger.—1 house and lot, block 30, situated and bounded as follows: west by Second street; north by A. Scott & W. K. Rule; east by B. Pratte, sr. and jr.; south by Chotean and Rocheblave—60 by 150 feet. Amount of tax, $2 00.

*Francois Caillou.—1 house and lot, block 49, situated and bounded as follows: east by Second street; north by I. Morin's estate; west by M. P. Leduc; south by B. Morin—60 by 150 feet. Amount of tax, $1 31¼.

*Louis Caillou.—1 house and lot, block 45, situated and bounded as follows: west by Second street; north by south L street; east by Mississippi street; south by south M street—300 ft. front. Amount of tax, $2 56¼.

*Francois Clement.—1 house and lot, block 61, situated and bounded as follows: south by north A street; west by Z. Muzena and

Brady; north by D. Bissell; east by S. Duprieul—30 by 120 feet. Amount of tax, $1 68¾.

Fred'k R. Conway.—1 house and lot, block 95, situated and bounded as follows: west by Fourth street; south by St. Charles Road; east by Mathew Franey; north by Connor's line. Amount of tax, $5 50.

Children of Touissaint Courzenot.—1 house and lot, block 95, situated and bounded as follows: west by Fifth street; south by north C street; east by Denniss Murphy; north by S. McKee—35 by 40 feet. Amount of tax, 37½ cents.

*Thomas Dowler.—1 vacant lot, block 96, situated and bounded as follows: south by Washington avenue; east by John —; north by Wm. Christy; west by J. McFarland—45 by 150 feet. Amount of tax, 74½ cents.

60 Lalathie Divers.—1 house and lot, block 65, situated and bounded as follows: west by Third street; south by north E street; east by Fourney & George; north by Berry Mechum—120 by 150 feet.

Salthaiel Divers.—1 house and lot, block 88, situated and bounded as follows: north by north D street; west by David Shelte: south by J. Warren; east by Labadie and Descency—50 by 150 feet. Amount of tax, $22 1½.

Estate of Baptiste Dube.—1 house and lot, block 82, situated and bounded as follows: south by south C street; east by Alexander McAllister; north by formerly Easton; west by Fourth street—120 by 75. Amount of tax, $2 00.

Estate of John Dales.—1 vacant lot, block 106, situated and bounded as follows: west by Fifth street; north by south C street; east by James Minor; south by south D street—203 by 135 feet. Amount of tax, $1 50.

James D. Earl.—1 vacant lot. block 91, situated and bounded as follows: east by Third street; north by Wm. Christy; west by Fourth street; south by G. F. Strother—60 by 230 feet. Amount of tax, $2 25.

Bank of Edwardsville.—1 house and lot, block 23, situated and bounded as follows: east by First street; north by L. Laneaudier; west by Soulard; south by Boisse's heir's, house formerly Grey's. Amount of tax, $2 50.

Alexander Ferguson.—1 house and lot, block 13, situated and bounded as follcws: east by Fifth street; south and west by alleys separating the same from R. H. Price & A. Gamble; north by Market street—115 feet.

Alexander Ferguson.—1 vacant lot, block 113; situated and described as follows: south by alley; east by alley, and west by A. Gamble—15 by 75 feet. Amount of taxes, $15 12½.

Estate of John R. Guy.—1 house and lot, block 23, situated and bounded as follows: east by First street; north by Louis Boissie; west by A. Soulard; south by J. B. Gaynon—20 by 200 feet.

*James Gunsollis.—1 house and lot, block 55, situated and bounded as follows: east by Second street; south by south E street; west by

Third street: north by J. Jovial, and E. Bouche—60 by 300 feet. Amount of tax, 50 cents.

*Philip Gillorie.—1 house and lot, block 77, situated and bounded as follows: west by Fourth street; north by Mgt. Martigney; east by Vital Baughnean; south by south H street—60 by 150 feet. Amount of tax, 75 cents.

Abraham Gallatin.—1 house and lot, block X, situated and bounded as follows: north by south A street; east by M. Lecompte; south by United States; west by Ed. Charless—50 by 120 feet.

Abraham Gallatin.—block 113, situated and bounded as follows: east by Sixth street; north by south A street; west by J. H. Garner; south by Horatio Cozens—114 by 135 feet. Amount of tax, 75 cents.

61 Alexander Grimeaud.—1 house and lot, block 41, situated and bounded as follows: east by Mississippi street; north by South G street; west by Ml. Marley, Lr; south by P. Guiriette—120 by 150 feet. Amount of tax, 87½ cents.

Stephen Hemstead, jr.—1 house and lot, block 61, situated and bounded as follows: west by Third street; north by Daniel Bissel; east by Francis Clemont; south by R. R. Conway (undivided half)—50 by 120 feet. Amount of tax, $1 27.

D. B. Hill.—1 house and lot, block 16, situated and bounded as follows: west by First street; north by North street; east by Mississippi street; south by J. Mullanphy—121 feet front. Amount of tax, $5 52.

*Jeam B Hortiz.—1 house and lot, block 43, situated and bounded as follows: west by Second street; north by A. Saugrain; east by L. A. Benoist; south by Mgt. Hortiz—60 by 150 feet. Amount of tax, $1 31¼.

Jno. H. Janet.—1 house and lot, block 16, situated and bounded as follows: on lot of J. Mullanphy; west by First street; north by D. B. Hill; east by Mississipi street; south by F. Bosnine. Amount of tax, $1 12½.

Felicite Leguenier.—1 house and lot, block 29, situated and bounded as follows: west by Second street; west by J. P. Cabanne; east by Richard Graham; south by A. P. Chouteau—60 by 150 feet. Amount of tax, $1 58.

Mary Ann Leperch (St. John).—1 house and lot, block 64, situated and bounded as follows: east by Second street; north by E street; west by J. S. Lanhaur; south by Frs. Lebeau—30 by 115 feet. Amount of tax, 75 cents.

Francois Levielle, widow.—1 house and lot, block 44, situated and bounded as follows: west by Second street; North by Francis Tayon; east by Piere Longtin; south by South L street—120 by 150 feet. Amount of tax, 62½ cents.

Francis Labuche.—1 house and lot, block 41, situated and bounded as follows: east by First street; north by Pierre Guireitte; west by Florence Flore; south by South H street—90 by 150 feet. Amount of tax, $1.

I. G. Lindell and Hugh Richards.—1 vacant lot, block 87, situated

and bounded as follows: east by Third street; north by L. Le Brun; west by L. Brazeau; south by J. B. C. Lucas—50 by 150 feet. Amount of tax, 40 cents.

John S. Langham.—1 house and lot, block 64, situated and bounded as follows: north by North E street; west by J. Mullanphy; south by Frs. Le Beau; east by M. A. Leperché—32 by 30 feet. Amount of tax, $1 05.

*Mary Ann Lee.—1 house and lot, situated and bounded as follows: east by Third street; north by Ed. Cole; west by city line; south by State road, excluding one arpen sold to R. Walsh. Amount of tax, $4 05.

James Lapiere, (estate of J. V. Gamier, agent.)—1 vacant lot, block 25, situated and bounded as follows: west by Second street; north by North I street; east by Reynolds and Boisminne; south by Clamorgan's heirs—120 by 150 feet. Amount of tax, 50 cents.

Richard Millagen.—1 house and lot, block 32, situated and bounded as follows: east by First street; north by H. & S. Papin; west by alley; south by C. Gratiot—32 by 150½ feet. Amount of tax, $4 35.

62 *James Morrison, (estate J. C. Sullivan.)—1 house and lot, block 38, situated and bounded as follows: east by First street; north by M. Roletto; west by Mullanphy; south by L. A. Benoist—60 by 150 feet. Amount of tax, $3 75.

Geo. K. McGannegle, (undivided ¼.) 1 house and lot, block 36, situated and bounded as follows: east by First street; north by Wm. C. Carr; west by J. Mullanphy; south by A. Soulard—30 by 100 feet. Amount of tax, 75 cents.

Same.—Block 23, situated and bounded as follows: east by First street; north by A. Vasgues; west by Second street; south by A. Rancontre—44 by 300 feet. Amount of tax, 18¾ cents.

Paul Martin, (estate of.)—1 vacant lot, block 41, situated and bounded as follows: west by Second street; north by Marley and L. Martin; east by Pierre Guirrette; south by John L. Sutton—60 by 150 feet. Amount of tax, 62½ cents.

Joseph Mouie, (estate of.)—1 house and lot, block 49, situated and bounded as follows: east by Second street; north by South K street; west by Third street; : south by Leduc and Francis Caillon—120 by 300 feet. Amount of tax, $1 87½ cents.

*Jno. B. Mousette.—1 house and lot, block 49. situated and bounded as follows: west by Third street; north by M. P. Leduc; east by Baptiste Mouie; south by South L street—60 by 150 feet. Amount of tax, 25 cents.

Thomas Maddin.—1 house and lot, block 33, situated and bounded as follows: west by Second street; north by North A street; east by William Smith; south by John O. Fallon—120 by 90 feet. Amount of tax, $3 75.

*Jno. A. Piquette.—1 house and lot, block 23, situated and bounded as follows: east by First street; north by A. Vasques; west by Second street; south by A. Repcontre—44 by 300 feet. Amount of tax, $1 75.

Risdon Price.—1 vacant lot, block 57, situated and bounded as fol-

lows: east by Second street; south by South C street; west by E L. Bebee; north by Jaques Peras—60 by 150 feet.

*Same.—1 house and lot, block 62, situated and bounded as follows: east by Second street; north by self and V. Guion; south by North B. street; west by Third street—120 by 300 feet. Amount of tax, $11 37½.

*Same.—1 vacant lot, block 62, situated and bounded as follows: west by Third street; north by North C street; east by E. Berthold; south by self—120 by 150 feet.

*Same.—1 house and lot, block 89, situated and bounded as follows: east by Third street; north by St. Charles road; west by J. B. C. Lucas; south by Joseph Papin—80 ft. front.

*Same.—1 vacant lot, bloek 113, situated and bounded as follows: east by Fifth street; north by A. Ferguson and E. Bates; west by Sixth street; South by South A street—115 by 270 feet. Amount of tax, $2.

63 Francis Robidoux.—1 house and lot, block 5, situated and bounded as follows: west by First street; north by D. Bissell; east by M. Robidoux; south by South C street—80. Amount of tax, $12 50.

*Robt. Rankin.—1 house and lot, block 16, situated and bounded as follows: house on land of D. B. Hill, formerly Thomas Brddys' bank of the Missouri. Amount of tax, $1 81½.

*Antonine Rancontre, jr.—1 house and lot, block 23, situated and bounded as follows: east by First street; north by J. A. Piquette, west by Second street; south by North K street—23 by 300 feet. Amount of tax, $1 75.

*Andrian and Emeline Rancontre.—1 house and lot, block 23, situated and bounded as follows: east by First street; north by J. Piquette; west by Second street; south by A. Rancontre, jr.—23 by 300 feet. Amount of tax, $1 75.

Mary Ann Revierre, (Bacanne.)—1 house and lot, block 53, situated and bounded as follows: east by Second street; north by Esther Walsh; west by Henry Battu; south by Baptiste Roy—60 by 150 feet. Amount of tax, $1 12½.

William Rector.—1 house and lot, block 90, situated and bounded as follows: east by Third street; north by Wm. Chambers; west by Mathew Franey; south by St. Charles road. Amount of tax, $2.

*William Ramey.—1 house and lot, block 107, situated and bounded as follows: west by Fifth street; south by E street; east vacant; north by South D street—200 ft. front. Amount of tax. $1 12½.

Sheepshanks, (Wash. agent.)—1 house and lot, block 66, situated and bounded as follows: east by Second street; north by North C street; West by Peter Lindell; south by Thos. H. Benton—60 by 170 feet. Amount of tax, $3.

David Shittle.—1 house and lot, block 8, situated and bounded as follows: west by Fourth street; north by North D street; east by S. Divers; south by Jabez Warner—120 by 135 feet. Amount of tax, $5 25.

Theophilus W. Smith.—1 house and lot, block 4, situated and

bounded as follows: west by First street; north by Wm. Clark; east by Mississippi street,; south by J. L. Sutton—40 ft. front. Amount of tax, $1.

*Michael Traynor.—1 house and lot, block 95, situated and bounded as follows: east by Fourth street; north by Sarah Kaufman; west by S. Labbadie; south by North G street—30 by 135 feet. Amount of tax, $1.

*Mary Vining (heirs of).—1 house and lot, block 115, situated and bounded as follows: west by Sixth street; north by John Goodfellow; east by Waite Lowery; south by North H street—114 by 135 fees. Amount of tax, $3.

*Stephen R. Wiggins (by S. Wiggins).—1 house and lot, block 66, situated and bounded as follows: east by Second street; north by North C street; west by Peter Lindell; south by Thomas H. Benton—60 by 170 feet. Amount of tax, $3.

64 On Monday, the 5th day of June next, at the door of the register's office, I will sell the above property, or so much thereof as will be sufficient to satisfy the taxes and costs due thereon, respectively, to the city of St. Louis, for the year 1825. Sale to commence at 10 o'clock a. m., and to continue from day to day until the whole be disposed of.

M. WHERRY, *City Collector.*

Those marked thus * have been paid.

Assignment.

There is endorsed on said advertisement the following assignment: For value received John Shackford this twenty-fifth day of September, A. D. 1820, I hereby assign to —— all my right, title, and interest in and to the premises designated in the within certificate.

GEO. K. McGUNNEGLE.

To the offering of which the plaintiffs objected, admitting, however, the genuineness of the paper, because of the incompetency and irrelevancy of the same; but said objection was overruled by the court; to the overruling of which the plaintiffs excepted. Said certificate was read to the jury.

State and county taxes.

65 15. The State and County tax receipts for the years 1837, 1838, 1839, 1845, 1846, 1847, 1848, 1849, 1853, 1854, 1855, 1856, and 1857, in the words and figures following:

Received of William Risley twenty-two dollars 26-100, being the amount of State and county taxes for the year 1837 in St. Louis

county, as below detailed, including tax on poll and on personal property:

	No. acres.	Hundreths of an acre.	No. of survey and parts of section.	No. of range and township.	No. of section.	No. of lot.	No. of block.	City or town.	Street, avenue.	No. feet front.	No. feet deep.	
State, $11 13							4	St. Louis.	Front.	42	120	N. Hoffmann, S. Stanford, E front W N. Lombard st. So. E. Kiser, W. 2nd street.
County, 11 13							44	St. Louis.	Second	150	300	
$22 26							70	St. Louis.	Third.	71	150	N. St. Pierre, S. E. Morton, W. 3d. street.

JACOB R. STINE, *Collector.*

Endorsed: State and county tax, $22 26. Paid Nov. 10th, 1837.

Received of William Risley seventy-one dollars 58-100, being the amount of the State and county taxes for the year 1838 in St. Louis county, as below detailed, including tax on poll and on personal property:

	No. of acres.	Hundreths of an acre.	No. of survey and parts of section.	No. of range and township.	No. of section.	No. of lot. No of block.	City or town.	Street, avenue, or lane.	No. feet front.	No. feet deep.	
State, $10 79						4		Front.	43	120	E. Font st., S. Stanford, &o.
County, 10 79						52		Third.	80	1500	E. Walsh, S. Kerr W. 3d &c.
$21 58						44		Second	150	300	E. S River, Ranney, W. 2d.

J. R. STINE, *Collector.*

66 Endorsed: State and county taxes, $21 58. Paid Oct. 20th, 1838. By W. S. McKNIGHT.

Received of William Risley thirty-two dollars 82-100, being the amount of State and county taxes for the year 1839 in St. Louis

county, as below detailed, including tax on poll and on personal property.

	Acres.	Survey.	Range and township.	Section.	Lot.	Block.	City or town.	St., av. or lane.	Ft. front.	Ft. deep.	
State, $16 41 County, 16 41						4	St. Louis.	Front.	40	120	E. Front st., So. Stanford, W. Simon
$32 82						52	St. Louis	Third.	80	150	N. Hoffman. E. Walsh, So. Kerr, W. 3d st.
						44	St. Louis	Second	150	300	E. River, So., Ranney, W. 2nd N. Lombard st.

JACOB R. STINE, *Collector*.

Received of William Risley seventy-seven 38-100 dollars, being the amount of the State and county taxes for the year 1845 in St. Louis county, as below below detailed, on the real estate herein described, including tax on poll and on personal property.

	Acres.	Survey.	Range.	Township.	Section.	Lot.	Block.	City or town.	Street, av. or lane.	Feet front.	Feet deep.	
State, $9 19 Additional County, 4 59 Jury tax, 1 43							44	St. Louis.	Second.	130	300	Boundary, N. Lombard st., E. S. Schoenthaler, W. Second st.
$27 38												

HENRY S. WISE, *Collector*.
By E. A. KEISER, *Dep.*

St. Louis county, November 15, 1845.

Endorsed: State and county tax for 1845, block 44.

67 Received of William Risely sixteen 56-100 dollars, being the amount of State and county taxes for the year 1846 in St. Louis county, as below detailed, on the real estate herein described, including tax on poll and personal property.

1st Ward.	Lot.	Block.	City or town.	Street or av.	Front.	Depth.	Description.
State, $6 67 County, 6 77 Additional County, 2 22 Jury tax, 1 00 $16 56		44	St. Louis.	Second	150	300	N. Lombard, River, S. Schoenthaler, W. 2nd st.

Saint Louis county, September 30th, 1846.

HENRY S. WISE, *Collector.*
By ALLEN FORSYTH, *Deputy.*

Endorsed: State and county tax, 1846, block 44.

Received of William Risley twenty-two 65-100 dollars, being the amount of State and county taxes for the year 1847 in Saint Louis county, on real estate, as below detailed, including tax on poll and personal property.

St. Louis.	Block.	Street or avenue.	Front.	Deep.	Whose addition.	No. of lot, Block in add.	North.	East.	South.	West.
State tax, $9 72 County, 9 72 Additional County, 2 43 Jury, 78 $22 65	44	Second	151	495			Lombard st.	River.	Scoenthaler.	Second.

Saint Louis county, August 11, 1847.

THOMAS R. AXTELL, *Collector.*
By T. H. KNOX.

1847. Block 44. $22 65.

68 Received of William Risley seventy-one 38-100 dollars, being the amount of State and county taxes for the year 1848 in St. Louis county, on real estate, as below detailed, including poll, personal property.

St. Louis.	Block.	Street or avenue.	Front.	Deep.	Whose addition.	No. of lot.	Block in add.	North.	East.	South.	West.	Valuation.
	44	Second	151	195				Soulard st.	River	Schœnthaler.	Second	4 500
State tax, $9 72												°150
County, 9 72												†21
Additional County, 1 94												
$21 38												

° 1 slave. † 1 cattle and 1 clock.

Saint Louis county, Sept. 25th, 1848.

THOMAS R. AXTELL, *Collector.*

Endorsed: W. Risely; tax, State and county, 1848; $21 38, bl'k 44.

Received: of William Risley fifty-eight 66-100 dollars, being the amount of State, county, and road taxes for the year 1849, in Saint Louis county, on real estate, as below detailed, including personal property.

St. Louis.	Block.	Street or av.	Front.	Deep.	Whose addition.	No. of lot.	North.	East.	South.	West.	Valuation.
	44	Second	150				Lombard	River.	Schœnthaler.	Second	11 700
State, $23 46											
County, 23 46											
Add'l county, 5 87											
Road, 5 87											
$58 66											

Saint Louis county, Oct. 5th, 1849.

THOMAS R. AXTELL, *Collector.*
By KNOX, *Dep'y.*

Endorsed: State and county tax, 1849, $58 66; bl'k 44.

198. Received of William Risely eighty-four 30-100 dollars, being the amount of State, county, road and school. taxes for the year 1843, for Saint Louis county, on real estate, as below detailed, including personal property.

Block.	Street or av.	Front.	Deep.	Whose addition.	Lot.	Block.	North.	East.	South.	West.	Valuation.	Amt.
44	2nd....	150	800	.....	.....	.....	Lombard st.	River	Schoenthaler.	2nd	$9,250	State tax...$28 10
132	Walnut.	26	137	.....	.....	.....	Alley	Anderson.	Walnut st ..	Bobb...	4,200	County 42 15
											13,450	School 14 05
									Personal property ...		600	
											14,050	$84 30

69 St. Louis county. October 26th, 1853.

JOHN BRADY SMITH, *Collector.*

Endorsed: State and county tax, 1853, $84 30; 2nd street, Walnut, in block, 44.

104. Received of William Risley, one hundred and thirty-four 05-100 dollars, being the amount of State, county, and school taxes, for the year 1854 for Saint Louis county, on real estate, as below detailed.

Block.	Street or av.	Front.	Deep.	Whose add.	Lot.	Block.	North.	East.	South.	West.	Valuation.	Amount.
	Second...	152	495	City St.								State tax.. $28 30
44				Louis.	------	44	Lombard st.	1st st....	Schoenthaler	Second st	$9,250	County .. 76 60
132	Walnut ..	26	138	"	------	--------	Alley ------	Anderson.	Walnut st..	Robert .	4,200	Additional county
194	Locust ...	28	114	"	------	--------	Singleton ..	Church...	Locust st...	Pallen..	4,000	School... 19 15
856	1st street.	452	495	"	------	--------	Soulard st..	Front st..	Schoenthaler	1st st..	1,000	
									Personal pro	perty ..	700	$134,05
											19,150	134,05
												$268 10

Saint Louis county, December 21st, 1854.

70 JOHN BRADEY SMITH, *Collector.*

Endorsed: State and county tax for 1854. State and county, $134 05; railroad 134 05; block 44 and 856, $268 10.

120. Received of William Risley, one hundred and ninety-four 28-100 dollars, being the amount of State, county, and school taxes for the year 1855, for Saint Louis county, on real estate, as below detailed, including poll and personal property.

Block.	Street or av.	Front.	Deep.	Whose add.	Lot.	Block.	North.	East.	South.	West.	Valuation.	Amt.
44	Second...	150	426	.....	.....	.....	Lombard ...	First.....	Schoenthaler	Second.	$9,520	State tax. $40 90
132	Walnut ..	26	132	.....	.....	.....	Alley	Anderson.	Walnut.....	Bobb ..	4,200	County .. 81 80
194	Locust ...	28	116	.....	.....	.....	Singleton...	Church...	Locust.....	Pallen .	5,500	Spinal road 40 90
856	First.....	156	340	.....	.....	.....	Lombard ...	Front	Schoenthaler	First ..	1,000	
									Personal pro	perty ...	500	School... 20 45
											20,450	194 28
												143 15
												$337 43

Saint Louis county, Nov. 27th, 1855.

GEORGE SMIZER,
By AXTELL, *Dept. Collector*.

Endorsed: State and county tax, 1855, $337 43; block 44 and 856.

139. Received of William Risley two hundred and forty-six 05-100 dollars, being the amount of State, county, special, road, and school taxes for the year 1856, in Saint Louis county, on real estate, as below detailed,
71 including poll and personal property.

Block.	Street or av.	Front.	Deep.	Whose add.	Lot.	Block.	North.	East.	South.	West.	Valuation.	Amt.	
44	Risley.	.....	.....	Risley's	17. 18	44	Lombard ...	Self.....	Lot No. 19..	Risley's ..	$680	State tax..	$51 80
"	Main ...	.....	.....	"	29 32	"	"	Main	Whitman...	Seif	2,180	County....	103 60
132	Walnut	26	137'	.....	.....	.....	Alley	Anderton ..	Walnut	Fobb.....	4,600	Special ...	51 80
194	Locust..	28	114	.....	.....	.....	Singleton...	Church.....	Locust	Barnard..	5,500	Road.....	12 95
856	Main....	137	130	Risley's	1 to 7	856	Lombard ...	Commercial.	Wade	Main	5,840	School.....	25 90
"	First....	163'	"	"	9 to 16	856	"	Front	Schoenthaler	Commr'l.	6,500		
											600		246 05
													129 50
											25,900		$375 55

St. Louis county, November 26th, 1856.

GEORGE SMIZER,
By EDWARD E. ARCHER,
Deputy Collector.

Endorsed: State and county tax, 1856, $375 55; block 44 and 856.

274. Received of Wm. Risley two hundred and forty-seven 19-100 dollars, being the amount of State, county, special, road, and school taxes for the year 1857, in Saint Louis county, on real estate, as below detailed, including poll and personal property.

Block.	Street or av.	Front.	Deep.	Whose add.	Lot.	Block.	North.	East.	South.	West.	Valuation.	Amount.	
44	Risley	114⁶	85				Lombard st.	Risley et al.	Forrester	Risley	2,850	State tax	$52 04
44	Front	74⁴	108				"	Main	Wittmar	Self et al.	4,940	County	104 08
132	Walnut	26	137⁶				Alley	Anderson	Walnut	Bobb	5,650	Special	52 04
856	Main	137	130⁷	Risley	1 to 7		Lombard st.	Comm'l	Wade	Main st.	5,480	Road	13 01
856	"	163	130⁷	"	9 to 16		"	Front st.	Schoenthaler	Comm'l	6,500	School	26 02
											25,420		$247 19
									Personal property		600		130 10
											$26,020		$377 29

St. Louis county, December 22nd, 1857.

JAMES McDONOUGH,
By J. B. PERKINS, *Dep'y Collector.*

Endorsed: State and county tax, 1857, $377 29; block 44 and 856.

72 The plaintiffs admitting that the said several tax receipts were genuine, objected to the same as incompetent and irrelevant. The defendant stated that he offered said receipts as evidence only of the boundary of his lot; whereupon the court overruled the plaintiff's objection, and admitted the said receipts in evidence, and to the decision of the court the plaintiff duly excepted.

16. Receipts for city assessments for opening South Main street, on which block 856 fronts, to the offering of which the plaintiff objected, because of the incompetency and irrelevancy of the same, not however, denying the genuineness of the receipts, but the objection was overruled by the court; to the overruling of which plaintiff excepted. Said receipts were then read to the jury, in words and figures as follows, to wit:

Receipts for city assessments.

Execution No. 89.—Received Saint Louis, April 24th, 1854, of William Risley, esq., forty-six 55-100 dollars, in full, for his assessment of the above-numbered execution, for the opening South Main street, in block No. 44, in the city of Saint Louis.

$46 55-100. FRANCIS MOLAIR,
City Marshal.
By R. DOWLING, *Deputy.*

Execution No. 92.—Rec'd Saint Louis, May 22nd, 1854, of William Risley, esq., forty-six 55-100 doll's, in full, for his assessment
73 in opening South Main street, by the city of Saint Louis, in block No. 856.

$46 55-100. FRANCIS MOLAIR,
Clty Marshal.
By R. DOWLING, *Deputy.*

17. Richard Dowling, being sworn, testifies as follows:

R. Dowling's testimony.

I am 58 years old; came to Missouri 47 years ago; have generally lived south of Market street, in Saint Louis; have known block 44 since 1817; Francis Tayon lived on it; also an old negro woman, named Leville; there were a picket-house and barn on Tayon's part; on the south half there were some old fruit trees; the house, when I first knew it, seemed to be 20 or 30 years old; never knew of any street along there, east of Second street; to go to Carondelet, one would have to go down Main to Poplar street, up Poplar to Second, down 2d and across the bidge, over Mill Creek; there was no road east of Main street; the commencement of the construction of the present Main street, south of Plum, has been since 1851; sometimes the river bank along there was bluff, and sometimes it was shelving; between Cedar and Mulberry streets the bank was at times 10 feet high; defendant has occupied the place about 30 years—that is, a certain portion of block 44.

On cross-examination, witness testified as follows: The
74 place of Francis Tayon is now block 44; first knew the ground in 1817; block 856 was formed since the commencement of the extension of the cross streets into the river; there are no improvements on the block; on the north half of the block there is a foundation; when I first knew block 44 a cart could not pass up or down the river between the water's edge and the bluff; there were then only five places leading to the river in the whole town; one might have walked along the eastern edge of block 44, by holding to the ends of the fences; the fences on some of the lots reached to the edge of the river bank; in going up or down the river bank, one would have to climb fences.

18. A map of Risley's addition, made by the defendant, to the offering of which the plaintiff objected, because of the incompetency and irrelevency of the same, but the objection was overruled by the court, to the overruling of which plaintiffs excepted, and the said map was submitted to the jury. It is agreed that said last-mentioned map need not be herein inserted, but that [that] the same may be used and referred to in the Appellate Court, in the same manner and with like effect as if herein inserted. All of said items of evidence,
75 from 1 to 18, both inclusive, was read in evidence to the jury by the defendant.

The defendant here rested.

Whereupon the plaintiffs introduced and read and submitted and explained to the jury the following described maps, plats, depositions, and papers, and documents, as evidence in rebuttal:

1st. The deposition of Renard and Geyer, contained in volume 31 of the Missouri reports, pages 112 and 113, in relations to Chouteau's map.

Deposition of Renard and Geyer.

Scott, judge, delivered the opinion of the court:

The first question that arises in this case is the propriety of the action of the Land Court in admitting in evidence the plat of the town of St. Louis, placed in the office of the record of land titles by Auguste Chouteau in the year 1825. The plat was made in 1764, about the period that the village of Saint Louis was founded. Chouteau is reputed as one of the founders of the village. The recorder of land titles, who had been in the office since 1837, testified that it was a public paper, and as such had been inventoried. Auguste Chouteau has been dead many years. Mr. Geyer testified that he had seen the plat in the recorder's office several times; that this map was produced in a case he tried for the schools twenty-four or twenty-five years ago.

76 When we consider that in matters of public concern, traditionary evidence is admissable as to boundaries, we are at a loss to conceive the ground on which the objection to the evidence is based. Chouteau was not the owner of the land on which the village was laid out, nor does it appear that he had any previous authority to do the act. But his conduct, and that of his colleagues,

in laying off the town was sanctioned and adopted by the Spanish government. For many years the map has been placed in the public office, where all the papers and documents relating to the early land titles in this territory were deposited. It has been exposed to the examination and scrutiny of all, so that its errors might have been detected. The map was made at a time and in a manner which show that its execution could not have been prompted by any sinister motive.

We know that it has frequently been in use in this court, to show the plans and extent of the ancient village as originally laid out by its founders. For such purposes, when all the circumstances attending this map are considered, it is not easy to conceive more satisfactory evidence of facts of so ancient a date. If authority is wanted in support of this view of the subject, it may be found in the
77 cases of Morris *vs.* The Lessees of Harmer's Heirs, 7 Pet., 560, and the Commonwealth *v.* Alburger, 1 Whar., 469.

2nd. The said Chouteau's map of the former town of Saint Louis.

3rd. Official surveys of blocks 43, 44, and 45, in the city of Saint Louis, made by the United States.

4th. A plat of the city of Saint Louis, dated August 12th, 1846, constructed by Surveyor General Conway.

5th. Loughboro's plat of the city of Saint Louis, dated April 14th, 1859, certified by Surveyor General Loughborough.

6. Louis Ride's concession and confirmation, being the concession and confirmation alluded to in survey No. 393 hereinafter mentioned, which said concession and confirmation is in words and figures as follows, to wit: (See agreement after No. 27.)

7. Louis Ride's survey No. 393, in words and figures as follows, to wit: (See agreement after No. 27.)

8. Abstract of all the confirmations and concessions in the old town of Saint Louis, commencing at block No. 1, at Plum street,
78 and going northward to Cherry street, in words and figures as follows, to wit: (See agreement after No. 27.) Also a similar abstract or list of the confimations and concessions in said town of block 41, 42, 43, 44, and 45, in words and figures as follows, to wit: (See agreement after No. 27.)

9. Plats of the respective towns of St. Charles and New Madrid.

10. Depositions of William Boli, as also deposition of Charles Sanguinette.

Deposition of Wm. Boly.

William Boly, of lawful age, being produced, sworn, and examined on the part of the plaintiff, doth depose and say: I was born on the Ohio river, coming to this county in or about 1785 or 1786. I was seventy-five years old last March. Missouri has been my home since childhood. I lived in Saint Louis in Spanish times. I lived on the west side of Main street, in Saint Louis, during Spanish times. What I mean by Spanish times is prior to December 20th, 1803. I knew the southern portion of Saint Louis in Spanish times; there were but few houses there then. During Spanish times Main street,

in said city, run to Baptiste Le Bean's; then it became a tow-
79 path or passway, about 25 feet wide, down to Mill Creek; the path or passway was for public use; that is, was the common understanding of the people that it was for public use; everybody used it for a public passway.

Cross-examination.

By defendant's attorney:

By Spanish times I mean when the Spaniards ruled here. I do not remember how old I was when the Spanish government ceased. I mean by tow-path or passway, the boats stopped there when they were going up the river, and the hands of the boats towed boats there. When the river was high the hands of the boats towed the boats by walking on the bank; and when the river was low, walked under the bank. I do not know whether people (other than boat hands) passed up and down the pathway; they could have done so, I suppose. I don't know how far Mill Creek was from Le Bean's.

WILLIAM BOLY.

This deposition was taken on the 16th day of October, A. D. 1862.

Deposition of C. Sanguinet.

Charles Sanguinet, of lawful age, being sworn, on the part of the plaintiff, deposeth and saith: I was born in the year 1783, in Saint Louis; I have lived here always, except I occasionally took a trip up the Missouri river. I was familiar with the whole town of
80 Saint Louis, both the northern and southern parts in Spanish times; knew all the houses and all the proprietors of them. There was always a path or road (sentier) between the lots and the river in Spanish times; that road extended the whole length of the town.

Quest. Describe that road? How broad was it from Chouteau's mill-creek up to two blocks above Madame Hortiz?

Ans. The road was, on an average, about ten or twelve feet wide. I knew a family named Levielle in Spanish times. I knew no one below Levielle, in the town of Saint Louis, in Spanish times. The road between the enclosure of the Laevielle family and the river was about 15 or 16 feet at the least. Madame Charleville lived in the same block above the Lavielle family. The road between Madame Charleville and the river, was about 15 or 16 feet wide; the road was about the same width along the whole block; the road spoken of was on top of the bank; it was a public road, and it was used as a public road during Spanish times; the people used said road as other public streets in Saint Louis. People could pass along the road, opposite Madame Hortiz, in Spanish times. People passed along said roads with carts during Spanish times.

Cross-examination.

When I was a boy I lived on Walnut street. I visited
81 Madame Charleville about once a week. I was about ten years of age when I first visited Madame Charleville's property. Madame Charleville first went to live on the property next to Laevielle, in 1791 or 1792.

I knew the man who lived there before Madame Charleville, but cannot remember his name. When I first knew Madame Charleville's property, there was a house, barn, and negro cabin on it, the whole place was inclosed by a fence. When I first knew the houses above spoken of, they appeared to have been built about 7 or 8 years; the lot run up to the road, along the river; the lot was the same depth as Madame Laeveill's, it was in the same block. Second street was used as a public road down to Mill creek in Spanish times; there was a wooden bridge across Mill creek in Spanish times; afterwards there was a stone bridge; people coming to Saint Louis usually came on Second street in fair weather; in wet weather they used the road along the river. That road between Laeveille's and the river was also used in fair weather by carts; the only crossing at Mill creek was at the bridge. Streets in Saint Louis in Spanish times were different widths, some 40, some 50, and some 60 feet wide. The principal use of the road along the river was for cordelling boats. The gov-
82 ernment always left a strip of land along the river for voyagers. There was a road all along both above and below the town, wherever boats ran. I do not know that the city or town ever expended any money repairing the road along the river; the people kept it in order; the first bridge across Mill creek was built by the inhabitants. I do not who built the second one. I knew the river ate into the bank every year during Spanish times, and the fences must have been removed or put further back, as there was always a road between the fences and the river. No one lived on the block north of Madame Charleville; there was an orchard there owned by Madame Larnay. I did not know Louis Ride. I knew Robadeau, he lived on the east side of First street, the first square south of the old market. Francis Tayon lived on that land after Madame Charleville left it; the path along the river wound along with the course of the river; in passing by the road or path from Laeveille, it would be necessary to make a turn to the right to get to Main street. Madame Charleville had a garden. Mrs. Charleville house was built on the north part of lot, about the middle of the lot. Second street was 40 or 50 feet wide opposite Madame Charleville's lot. There was a cross-street south of Laeveille's; people
83 turned up that cross-street to get into Second street to go to the bridge across Mill creek.

Re-examination.

The river approached nearest the enclosure at Mr. Joseph Hortiz's. Mr. Hortiz lived on the east side of Main street. The distance between the river and Mr. Hortiz's fence was about 10 or 12

feet. In the northern part of the town about 20 or 25 feet was the nearest that the river approached to the fences. The road at the northern part of the town was of the same character as the southern part. At a point opposite Mr. Cerre, there was a rocky point, which, when the water rose, the road could not be used. All the roads up and down was repaired by the inhabitants in Spanish times. The road continued below Mill creek; the bridge was then just where it is now.

Re-cross-examination.

The road along the river was repaired by the voluntary act of the people living along the road, and not by public authority or public taxes; passengers and people living along the road repaired it.

Re-examination.

There was no sand bar in front of Madame Charleville and Laeveilles in the river in Spanish times.

[SEAL.] SANGUINET.

This deposition was taken on the 9th day of March, A. D. 1864.

11. Confirmation to Madame Ortiz.

84 12. Survey No. 394, to Charles Levelle's representatives in block 44, in words and figures as follows, to wit:

(See agreement after No. 27.)

13. Survey of Pierre Letrasse, No. 185.

14. Confirmation to Francis Cailloux.

15. Marriage contract between Arthur Park and Madame Charleville.

16. Deed from Park and wife to Rochblave, of 29th December, 1824.

17. Deed from widow Francois Lavielle, (negress,) to Pierre Lougtain, of February 24th, 1825.

18. Deed of partition between Park and wife and others, of July, 1825.

19. Plat of township 45, north range 7 east, in the State of Missouri.

20. Confirmation of Joseph Navelle's in block 44.

21. Survey No. 135, of Pierre Datcherate.

22. Confirmation of Louis Coillaux, block 45.

23. Survey of Thomas Blondeau, No. 337.

24. Deed from Pascal S. Cerre to Eustache Caillaux.

25. Deed from Thomas Blondeau to Pierre Herbert, (dit Lecompte.)

26. Survey of the concession to Amiot, (heretofore introduced by defendant.)

85 27. Statute of limitation as to school lands in Saint Louis county, page 409 local laws, relating to Saint Louis county, entitled, An act to secure and preserve more completely certain school property in the county of Saint Louis. Approved January, 30th, 1857.

It is agreed that the above and next preceeding items of evidence marked respectively 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, need not be inserted herein, but that the same may be referred to and read before the Appellate Courts from the laws and papers which were read and referred to on the trial in the Circuit Court, or from copies thereof in the same manner and with like effect as if herein inserted.

The defendant in reply to the rebutting testimony of pl'ffs, introduced and submitted for the consideration of the jury the following testimony:

1st. A deed from Francis Tayon to Hypolite Papin, and deed from Hypolite Papin and wife to the defendant and Joseph Stearns.

2. Deed from Joseph Stearns to defendant, dated October 29th, 1836.

3. Application of Louis Ride to the Lieut. Governor of Louisiana, dated February 12th, 1779 for partition; order of the Lieut.
86 Governor thereon, appointing tutor and commissioners to make partition of property.

4. Deed of Martigney to Croozat and sale from Croozat to Chouteau, dated 23rd August, 1787.

5. Inventory of property of Amable Guions, widow and son of 1780.

6. Deed of Amable Guion, junior, to Lacompte.

7. Judicial sale of Louis Rides land in 1787, to Joseph Robedeau, and explanatory supplement by the heirs.

8. Deed from Rides heirs to Quinelle in 1779.

9. Hypothecation from Quinelle to Joseph Robideau in 1786.

To the introduction of all which evidence; that is to say, items of evidence 1, 2, 3, 4, 5, 6, 7, 8, 9, immediately preceding, the plaintiffs objected, for the reason that the same is incompetent, and irrelevant, but the court overruled the objection to which overruling plaintiffs excepted.

It is agreed that the above and next preceding items of evidence need not be inserted herein, but that the same may be referred to and read before the Appellate Courts, from the papers which were read and referred to on the trial before the Circuit Court, or
87 from copies thereof in the same manner and with like effect as if herein inserted.

Testimony J. B. Hortiz cont.

10. John B. Hortiz, recalled and examined, testified as follows: Old Joseph Robideau lived at the corner of Main and Elm streets, on the east side of Main street. Have heard of the old man Amable Guion; do not know where he lived in 1780; have never heard where he lived. Have heard of Lieut. Governor Cruzat. Don't know where he lived, but was always told by old people now long since dead, that he occupied the house on the block north of Elm and east of Main street adjoining the lot of Robideau.

On cross-examination, witness testified: The lot on which Joseph Robideau lived was north of Elm street, the government house was on Walnut street, next north of Robideau.

The plaintiff objected to the above testimony of John B. Hortiz as hearsay, incompetent and irrelevant, which said objection was overruled by the court; to which said overruling the plaintiffs at the time excepted.

Testimony of Thomas Marshall.

Thomas Marshall, being sworn, testified as follows: I reside in Saint Louis; my business is that of an examiner of titles to real estate; have examined almost all the early titles to lands in the
88 city of Saint Louis; have full abstracts of all the old grants and Spanish archives. The defendants counsel here showed witness the concession to Louis Ride of the date of 1779 witness stated. I have made examination of the records relating to the ground embraced in that concession; def'ts counsel read a portion of the concession to witness, and asked witness: Did you in your examinations, find any land located adjoining block 44, the title to which was in Martigney? To which witness answered: I did not, nor in Amable Guion either. I find Amable Guion in block 5; the way I make it Elm street is the cross-street, separating it from block 6; Martigney's lot was in block 6, immediately north of Louis Ride's lot, according to my judgment. Main street is Le Rue principale; 2nd street was never called by that name.

To all of which evidence of Thomas Marshall, the plaintiffs at the time objected, for the reason that the same was incompetent and irrelevant, and for the further reason that the witness gives the result of his judgment or opinion solely from an examination of the records.

On cross-examination the witness testified as follows: The
89 land sold by Ride's heirs to Quinelle, is immediately north of Elm street, according to the conclusion I have come to on the examination of the records alluded to.

The above is all the evidence in the case which was offered by either party.

Plaintiff thereupon asked the court to give the following instructions to the jury, which the court gave.

Instructions given for plaintiff.

2. The jury are instructed that the calls for the Mississippi river in the deeds or conveyances, read in evidence from one private individual to another private individual, do not give or create riparian rights.

3. The eastern boundary line of the corporation of St. Louis, of eighteen hundred and nine, read in evidence, and the eastern line of the out-boundary of December the eighth, eigthteen hundred and forty, read in evidence, both extend to the eastern boundary of the State of Missouri, which is the middle of the main channel of the Mississippi river.—Given.

4. If the jury believe from the evidence that a street or tow-path or passway or other open space, was permanently established for the public use between the Mississippi river and the most
90 eastern row of lots or blocks, of which block forty-four was one, in the former town of Saint Louis, when said town was first laid out or established, or founded there, and in that case the owners or claimants of said lots or blocks are not riparian proprietors of the lands between said lots or blocks and said river.—Given

5. If the jury believes from the evidence that a street or tow-path or passway, or other open space, was permanently established for the use of the public between the Mississippi river and the most eastern row of lots or blocks, (of which block forty-four was one,) in the former town of Saint Louis, when said town was first laid out or established or founded, and that the river after that time washed away the land, so that the western edge or bank thereof was west of said road or tow-path or passway, or other open space, and west of the eastern boundary line of said lots or blocks, and that afterward the river receded, so that the present western edge or bank thereof is no further west than when said town was first laid out, established or founded, the owners of said lots are not entitled to riparian rights.—Given.

91 6. If the jury believe from the evidence that a street or tow-path or passway, or other open space, was permanently established for the public use between the Mississippi river and the eastern row of lots or blocks, (of which block forty-four was one,) as said town existed prior to December the twentieth, eighteen hundred and three, then, and in that case, the owners or claimants of said lots or blocks are not riparian proprietors of the lands between said lots or blocks and said river.—Given.

Plaintiffs also asked the court to give the following instructions to the jury, which the court refused to give.

Instructions asked for plaintiff and refused.

1. If the jury believe from the evidence that block forty-four, (44,) in the former town of Saint Louis, was, by a United States suvrey, surrounded on all sides by streets, and that said survey has from the time of the recording and approving of the same, stood as an approved survey without appeal, the owners of the lot in said block thus surrounded are estopped from claiming any ground beyond the street, which is by said survey made its easteru boundary.

2. The jury will find for the plaintiff, if they believe from the evidence that all of the maps, plats, surveys, deeds, and other
92 documents and instruments, read in evidence by the plaintiff are genuine, and that the premises in controversy, are not within the boundaries of any land confirmed to any person or persons, but are within the boundaries of the corporation of 1809, read in evidence, and within the out-boundary of December the eighth, eighteen hundred and forty, read in evidence, and within the school assignment, being survey No. four hundred (400,) read in evidence,

and within the boundaries of the land described in the deed from the city of Saint Louis to the plaintiff, read in evidence.—Refused.

3. All streets, wharves, avenues, alleys, passways, and other thoroughfares, in towns and cities, are presumed to have been established for the public use, and those who wish to show the contrary must prove it. If, therefore, the jury believe from the evidence that there was a street, tow-path, passway, or other open space in the former town of Saint Louis, between the Mississippi river and the more eastern row of lots or blocks, (of which forty-four was one,) such street, tow-path, passway or other open space, the jury will presume was established for the use of the public, and not
93 affected, impaired, or interfered with by riparian rights, unless the contrary be proven to their satisfaction.—Refused.

4. If the jury believe from the evidence that in accordance with the plan of the former town of St. Louis, as the same was first laid out, established or founded, there was between the most eastern row of blocks and the Mississippi river from Plum street to Hazel street, a space of ground left for a street, road, tow-path or levee, or dedicated to any other use common to the inhabitants thereof, or to the public use, then the lots in said blocks are not riparian, and not entitled to alluvion.—Refused.

5. If the jury believe from the maps and plans, and all of the other evidence in the case, that the Spanish authorities intended to leave a space from Plum street to Hazel street, in the former town of Saint Louis, between the most eastern tier of blocks (of which block forty-four is one,) and the Mississippi river, for a continuation of Main street or Front street, or for any other public purpose, then the lots in said blocks have no riparian rights.—Refused.

6. The jury are instructed to disregard all parol evidence tending to establish a boundary of a lot varying from that of the other
94 lots in the same tier, if they are satisfied from all the evidence in the cause that such uniformity was a part of the plan of the Spanish town of Saint Louis.—Refused.

7. The jury are instructed that, as a question of law, the owners of lots in the town of Saint Louis, as said town existed prior to December the twentieth, eighteen hundred and three, have never had any riparian rights.—Refused.

8. If the jury believe from the evidence that the defendants claim under a confirmation, and that the survey of such confirmation does not call for the river as a boundary, they are estopped by said survey, and cannot claim any rights as a riparian proprietor.—Refused.

9. If both the confirmations and the surveys of the United States to private individuals for the most eastern row of lots west of the premises in controversy do not call for the Mississippi river as a boundary, then the owers of said lots are not entitled to said premises as riparian proprietors.—Refused.

10. If the jury believe from the evidence that prior to
95 December the twentieth, eighteen hundred and three, there was a road or passway between the front row of the lots

in the former town of Saint Louis and the Mississippi river; and that the river after that time washed away the land, so that the western edge or bank thereof was west of said road or passway, and west of the eastern boundary line of said lots, and that afterwards the river receded, so that the present western edge or bank thereof is no father west than where it was prior to December the twentieth, eighteen hundred and three, the owners of said lots are not entitled to raparian rights.—Refused.

11. As the concession, confirmation, and survey to Louis Ride, or his representatives, call for a permanent road on the east, neither the said Ride, nor his representatives, nor any one claiming by, through, or under him or them, can claim any riparian rights.—Refused.

12. It is only the acts and proceedings of the Spanish government which have been confirmed by the United States; the acts and proceedings of the United States themselves than can give or create riparian rights, or any other rights in or to the land in dispute. No act or proceeding of the corporation of the city of Saint Louis,
96 or of any private individual, can give or create any such right or rights.—Refused.

13. The whole or any part of a Spanish concession, which has not been confirmed by the United States, does not grant or convey any right, title, or interest in or to any lands.—Refused.

14. The defendant in the cause has set up no title in himself, or those whom he represents, or under whom he claims, but seeks to maintain his possession as a mere intruder, by setting up a title in third persons, with whom he has no previty. In such a case, it is incumbent upon the party setting up the defence to establish the existence of such an outstanding title beyond all controversy. It is not sufficient for him to show that there may possibly be such a title; if he leaves it in doubt, that is enough for the plaintiff. Where the plaintiff has a prima facia good title, he has a right to rely on such title, and is not bound to furnish any evidence to assist the defence. It is not incumbent on him negatively to establish the non-existence of such an outstanding title, but it is the duty of the defendant to make its existence certain.—Refused.

97 To the refusal of the court to give said last-mentioned instructions the plaintiffs at the time excepted.

Defendants instructions.

At the request of the defendant the Court gave the following instructions to the jury:

1. If the jury find from the evidence that prior to and on the 20th December, 1803, Madame Charleville inhabited, cultivated and possessed a lot of ground in the town of Saint Louis, being part of the present city, block 44, and bounded on the west by the present Second street, on the north by the present Lombard street, on the east by the Mississippi river, and on the south by the north line of the lot of Levielle which was parallel to said Lombard street, that said Madame Charleville claimed title to said lot, and she and those deri-

ving title under her, continued to inhabit, cultivate and possess said lot down to the 13th June, 1812; that river accretions have been made to said lot along its eastern line, and the premises sued for are a part of such accretions, lying between the north and south lines of said lot, extended to the river in its present position, then the plaintiff cannot recover, and the jury must return a verdict for the defendant. Given.

2. The circumstance that a passage-way or tow-path existed
98 along the river bank will not effect the right of the parties if the jury believe that the same was kept up at the charge and risk of the proprietor of the lot; that it followed the changes of the river, going to the east or west as the river receeded from or encroached upon the lot, and that the eastern enclosure of the proprietor was advanced or set back with such changes.—Given.

3. If the jury believe from the evidence that the claim confirmed to and surveyed for the representatives of Louis Ride, as shown in evidence by the plaintiff, was another and different claim from that under which Madame Charville inhabited, cultivated, and possessed her lot in block 44, and that said lot claimed by and confirmed to the representatives of Ride was in truth locally situated in another and different block, then the jury ought wholly to reject the confirmation and survey for the representatives of Ride as being irrelevant to the matter in controversey in this suit,—Given.

To the giving of whch said instructions for the defendant the plaintiffs at the time objected and excepted.

99 The jury having rendered a verdict for the defendant, the plaintiffs within four days thereafter filed a motion, with reasons, for a new trial, in the words and figures following, to wit: (See page of this 16 transcript.)

Which said motion having been heard and considered by the court, was by the court overruled; to the overruling of which the plaintiff then and there excepted.

And the plaintiffs now here tender this their bill of exceptions, and ask that the same may be signed and sealed by the court and the judge thereof, and made a part of the record in the cause, which is accordingly done this day of May, A. D. 1864.

[SEAL.] JAMES C. MOODY, *Judge.*

STATE OF MISSOURI, *County of Saint Louis, ss*:

I, Josiah Thornburgh, clerk of the St. Louis Circuit Court, certify the foregoing to be a true and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix seal of said court, office, in city of Saint Louis, this 29th day of September, A. D. 1864.

[SEAL.] JOSIAH THORNBURGH, *Clk.*

[5 ct. stamp.]

100 And afterwards, to wit, at the October term, 1866, of the said Supreme Court, the following further proceedings were had in said cause, to wit:

TUESDAY, *October*, 30*th*, 1867.

THE BOARD OF PRESIDENT AND DIRECTORS of the St. Louis Public Schools, appellant,
vs.
WILLIAM RISLEY, respondent.

It is suggested and shown to the satisfaction of the court that William Risley, the respondent herein, has departed this life, whereupon it is ordered that a writ of scire facias issue to bring in and substitute his representatives, David Ritter Risley and Sarah Risley. Cause continued.

Whereupon the following writ was issued.

Citation.

STATE OF MISSOURI, *ss:*

To the marshal of the Supreme Court held at St. Louis, of the State of Missouri, greeting:

We command you to summon David Ritter Risley and Sarah Risley, (a minor,) before the judges of our Supreme Court, on the first day of the next term thereof, to be held in the city of St. Louis, on
101 the third Monday of March next, then and there to make known why they should not as the representatives of William Risley, deceased, be made parties to a cause pending in our said court, wherein The Board of President and Directors of the Saint Louis Public Schools is appellant and William Risley was respondent, and have you then and there this writ.

Witness O. T. Fishback, clerk of our said court, at office, in the city of St. Louis, the second day of January, one thousand eight hundred and sixty-seven.

[SEAL.]

O. T. FISHBACK, *Clerk*,
By E. P. McCARTY, *Dept'y Cl'k.*

There is endorsed on said writ the following return of marshal:

Marshal's return.

Executed this writ in the county of St. Louis, on this 24th, 1867, by reading the same as furnised by the clerk to David Ritter Risley and Sarah Risley, (a minor,) the within named deft's.

JAMES C. ADAMS,
Marshall.

Fees $3 00

And afterwards, to wit, at the March term, 1867, of said court, the following further proceedings were had in said cause, to wit:

TUESDAY, *March* 19, 1867.

102 BOARD OF PRESIDENT AND DIRECTORS St. Louis Public Schools, appellant,
vs.
WILLIAM RISLEY, respondent.

Now again come the parties aforesaid, by their respective attorneys, and this cause coming on for a hearing, and the parties herein not being ready for trial, by leave of court this cause is set for a hearing on the first day of April next, David R. Risley, and Sarah Risley, by her curator George D. Humphrey's, enter their appearance.

And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *April 1st*, 1867.

BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis Public Schools, appellants,
vs.
WILLIAM RISLEY, respondent.

Now again come the parties aforesaid, by their respective attorneys, and after argument herein, submit this cause to the court.

And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

103 BOARD OF PRESIDENT AND DIRECTORS OF THE St. Louis public schools, appellants,
vs.
WILLIAM RISLEY, respondent.

Statement and brief of appellant filed.

MONDAY, *April 8th*, 1867.

And afterwards, to wit, at the same term of said court, the following further proceedings were had in said cause, to wit:

Appeal from St. Louis Circuit Court.

THE BOARD OF PRESIDENT AND DIRECTORS OF the St. Louis public schools, appellants,
vs.
DAVID R. RISLEY, AND SARAH RISLEY, by her curator, George D. Humphreys, heirs of William Risley, deceased, respondents.

MONDAY, *April* 15, 1867.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning

the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis Circuit Court be in all things affirmed, and stand in full force and effect, and that the said respondents recover of the said appellants their costs and charges herein expended and have execution therefor.

Opinion filed.

104 And afterwards, to wit, on the 24th day of April, A. D. 1867, said appellant appeared in court and filed their bond in said cause, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, the Board of President and Directors of the St. Louis Public Schools, as principal, and Julius Conrad and Chas. F. Meyer, as securities, are held and firmly bound unto David R. Risley and Sarah R. Risley, by her curator, George D. Humphreys, legal representatives of William Risley, dec'd, in the full and just sum of one thousand dollars, to be paid to the said David Risley and George D. Humphreys, curator, as aforesaid, or to their heirs, executors, administrators or assings, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 24th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, lately, at the March term, 1867, of the Supreme Court of the State of Missouri, in a suit depending in said court be-

105 tween the Board of President and Directors of the Saint Louis Public Schools and the above-named legal representatives of William Risley, deceased, judgment was rendered against the said Board of President and Directors of the St. Louis Public Schools, and the said Board of Public Schools having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said David R. Risley, and Sarah R. Risley, by her curator, Geo. D. Humphreys, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now, the condition of the above obligation is such that if the said Board of President and Directors of the Saint Louis Public Schools shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

The Board of President and Directors of the St. Louis Public Schools, by

[SEAL.] S. D. BARLOW, *President.*
[SEAL.] CHAS. F. MEYAR.

106 [SEAL.] JULIUS CONRAD.

Sealed and delivered in presence—
GEO. B. KELLOGG.

On the back of which bond the following endorsement appears:

This bond is deemed by the court sufficient, and the writ of error operates as a supersedeas in the case within named.

DAVID WAGNER,
Chief Justice of the Supreme Court of Missouri.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court held at St. Louis, of the State of Missouri, certify that the above and foregoing is a true, full and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remains of record and on file in my office.

Witness my hand, with the seal of said court hereto affixed, at office, in the city of St. Louis, this 26th day of October, A. D. 1867.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dp.*

107 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, at March term thereof, 1867, between the Board of President and Directors of the St. Louis Public Schools, appellant, and David R. Risley and Sarah R. Risley, by her curator, George D. Humphreys, legal representatives of William Risley, deceased, a manifest error hath happened, to the great damage of the said Board of President and Directors of the St. Louis Public Schools, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued at office, in the city of St. Louis, with the seal of the Circuit Court of the United States for the district of Missouri, dated as aforesaid.

[SEAL.] BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.

[50-cent rev. stamp.]

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a true and complete transcript of the record and proceedings, and all things concerning the same in the within-entitled cause, as fully as the same remain of record and on file in my office.

Witness my hand, with the seal of said court hereto affixed, at office, in the city of St. Louis, this 26th day of October, A. D. 1867.

[SEAL.] O. T. FISHBACK, *Cl'k.*
Per E. P. McCARTY, *Dp.*

[5-ct. stamp.]

Endorsed: Writ of error. The Board of President and Directors of the St. Louis Public Schools *vs.* David R. Risley and Sarah R. Risley, by her curator, George D. Humphreys, legal representatives of William Risley, deceased. Filed April 24, 1867. O. T. Fishback, clerk, per E. P. McCarty, dep.

Supreme Court of the United States.

No. 147.—December Term, 1868.

THE St. LOUIS PUBLIC SCHOOLS, Plaintiff in Error,

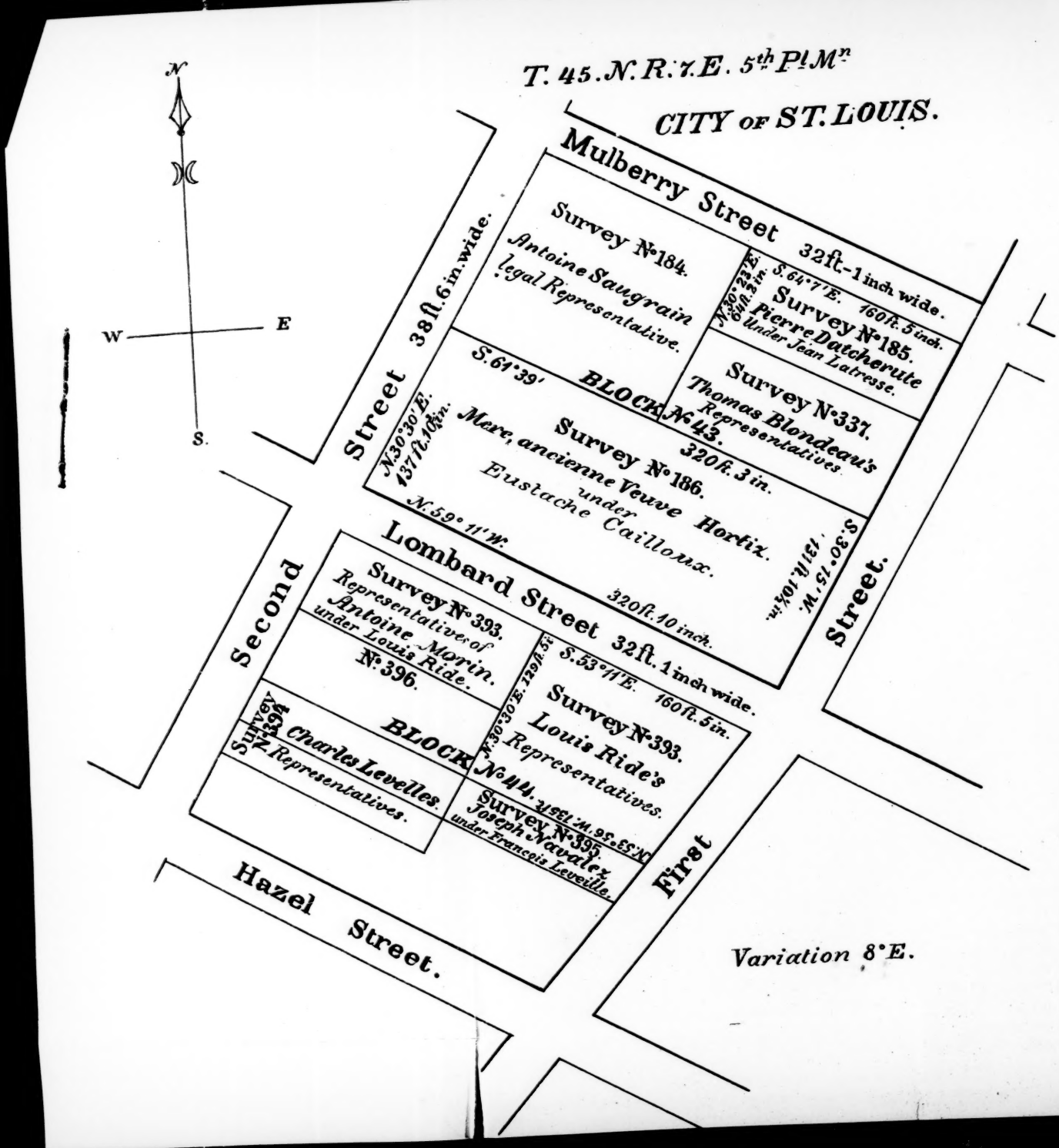
vs.

D. R. RISLEY and others.

Documents Referred to in Agreement.

(P. 49, RECORD.)

J. L. Pearson, Printer, corner 9th and D streets.


T. 45. N. R. 7. E. 5th Pl. Mn
CITY OF ST. LOUIS.
N
W
E
S.
Mulberry Street 32ft.-1 inch wide.
Survey N°184.
Antoine Saugrain
legal Representative.
S. 64°7' E. 160ft. 5 inch.
N. 30° 30' E. 438ft. 2 in.
Survey N°185.
Pierre Datcherute
under Jean Latresse.
Survey N°337.
Thomas Blondeau's
Representatives
Street 38ft. 6 in. wide.
S. 61°39'
BLOCK N°43.
320ft. 3 in.
N. 30° 30' E. 437ft. 10 in.
Survey N°186.
Mere, ancienne Veuve Hortiz.
under
Eustache Caillonx.
N. 59° 11' W.
320ft. 10 inch.
S. 30° 15' W. 131ft. 10 in.
Second Street.
Lombard Street 32ft. 1 inch wide.
Survey N°393.
Representatives of
Antoine Morin.
under Louis Ride.
N°396.
S. 53°11' E. 160ft. 5 in.
N. 30° 30' E. 119ft. 5 in.
Survey N°393.
Louis Ride's
Representatives.
Survey N°394
Charles Levelles.
Survz Representatives.
BLOCK N°44.
Survey N°395.
Joseph Navalez
under Francois Leveille.
Hazel Street.
First
Variation 8°E.

Supreme Court of the United States.

No. 147 of December Term, 1868.

Documents referred to in Agreement,

(P. 49, Record.)

Survey Number Three Hundred Thirty-seven of Saint Louis Lands.

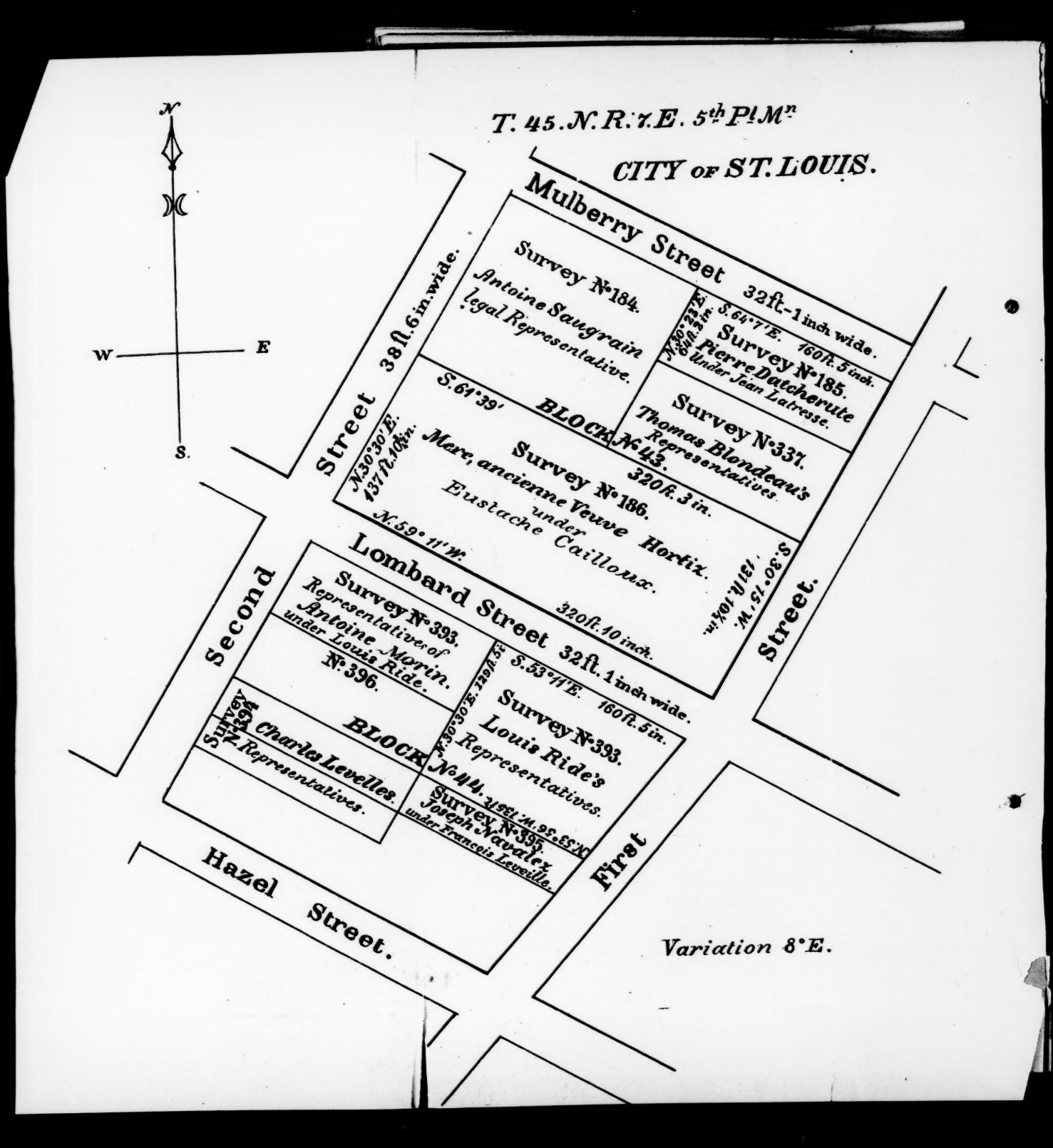
Plat and description of the survey of a lot situated in block number forty-three, of the town (now city) of St. Louis, in township forty-five, north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed by Joseph C. Brown, Deputy Surveyor, under his contract with the surveyor of the public lands in the States of Illinois and Missouri, dated the fifteenth of September, eighteen hundred thirty-five. It being the lot of one hundred twenty by one hundred fifty French feet, granted to Thomas Blondeau, on the fifth of August, seventeen hundred sixty-six, by the Spanish officers St. Ange and Lefebvre, and confirmed to Thomas Blondeau's representatives by the act of Congress of the twenty-ninth of April, eighteen hundred sixteen, entitled, "An act for the confirmation of certain claims to land in the Western District of the State of Louisiana, and in the Territory of Missouri."

For the interference of this survey with snrvey No. 185, see the statement at the end of the following description:

[See connected plat of blocks 43 and 44 prefixed.]

Description: Begin at the intersection of the southern edge of Mulberry street with the western edge of First street, the northeast corner of block number forty-three of this lot, and of survey number one hundred eighty-five, a lot in the name of Pierre Datcherute under Jean Latresse.

Thence south, thirty degrees and fifteen minutes west, along the western edge of first street—the eastern boundary of this lot—at sixty-four feet and two inches, the south-east corner of the lot of Datcherute under Latresse; at one hundred fifty-one feet ten and a half inches the south-east corner of this lot, and the north-east corner of the lot of Mère, ancienne Veuve Hortiz under Eustache Cailloux, survey number one numbred eighty-six.


T. 45. N. R. 7. E. 5th P.M.
CITY OF ST. LOUIS.
N
W
E
S.
Mulberry Street 32ft.-1 inch wide.
Survey N°184.
Antoine Saugrain
Legal Representative.
S. 64°7' E. 160ft. 5 inch.
N. 30°23' E. 8ft. 3 in.
Survey N°185.
Pierre Datcherute
Under Jean Latrese.
Survey N°337.
Thomas Blondeau's
Representatives.
S. 61°39'
BLOCK N°43.
320ft. 3 in.
Survey N°186.
Mere, ancienne Veuve Hortiz.
under
Eustache Caillonx.
N. 30°30' E. 137ft. 10in.
Street 38ft. 6 in. wide.
N. 59°11' W.
320ft. 10 inch.
S. 30°15' W. 131ft. 10in.
Lombard Street 32ft. 1 inch wide.
Second Street.
Survey N°393.
Representatives of
Antoine Morin.
under Louis Ride.
N°396.
S. 53°11' E. 160ft. 5in.
N. 30°30' E. 129ft. 5in.
Survey N°393.
Louis Ride's
Representatives.
Survey N°394
Charles Levelles.
Representatives.
BLOCK N°44.
Survey N°395.
Joseph Navalez
under Francois Leveille.
N. 33°35' W. 135ft.
Hazel Street.
First Street.
Variation 8° E.

Thence north, sixty-one degrees and thirty-nine minutes west, along the southern boundary of this lot and the northern boundary of the lot of Veuve Hortiz under Cailloux; at one hundred fifty-nine feet and ten inches the south-west corner of this lot and the south-east corner of the lot of Antoine Saugrain's legal representatives, survey number one hundred eighty-four.

Thence north, thirty degrees and twenty-three minutes east, along the western boundary of this lot and the eastern boundary of A. Saugrain's lot; at eighty feet eight and a half inches the south-west corner of the lot of P. Datcherute under J. Latresse; at one-hundred forty-four feet ten and a half inches the north-west corner of this lot, and of that of Datcherute under Latresse, and the north-east corner of the lot of A. Saugrain, on the southern edge of Mulberry street.

Thence south, sixty-four degrees and seven minutes east, along the southern edge of Mulberry street, the northern boundary of this lot; at one hundred sixty feet and five inches the beginning corner.

SURVEYOR'S OFFICE,
ST. LOUIS, *6th of May*, 1847.

The foregoing plat and description of survey number three hundred thirty-seven of St. Louis lands are this day recorded, examined, and approved.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Statement, relative to the claim under survey No. 337 in block No. 43, and the interfering claim under survey No. 185, made in compliance with the instructions of the Commissioner of the General Land Office, of the 18th of April, 1846, to the Surveyor General in St. Louis.

Survey No. 337, Thomas Blondeau—120 front by 150 French feet deep; concession to Thomas Blondeau, on the 5th of August, 1766, by the Spanish officers St. Ange and Lefebvre, bounded front by Main street, on the rear by the King's domain, on one side by the land of Mr. Devolsey, and on the other side by the King's domain.—(See Livre Terrien, No. 1, folio 4; also book F, p. 148, in the office of the United States recorder of land titles.) In the concession to Devolsey (on the 15th August, 1766, Livre Ter., No. 1, p. 6) of 240 by 300 feet, (see block No. 42,) his lot is bounded on one side by a cross street, which divides it from the lot of Blondeau. Claim taken up by Recorder Bates on the 31st December, 1813, under the act of the 13th June, 1812. Testimony by A. Chouteau of the inhabitation of this lot since the establishment of St. Louis.—(Bates' Minutes, page 140.) Confirmed by the act of Congress of the 29th April, 1816, to Thomas Blondeau's representatives to the amount conceded. —(See Recorder Bates' decision, book No. 1, p. 6, and Americain State Papers, vol. III., page 278, Duff Green's edition, 1836.)

Survey No. 185, Pierre Datcherute under Jean Latresse—60 front by 150 feet deep; claimed on the 24th November, 1825, before Theodore Hunt, recorder of land titles, under the act of the 26th of May, 1824, as bounded east by the Mississippi river, leaving space for a tow, south and west by part of same square, and north by south T street.

Michel Morin sworn: says he knows the lot claimed, and that prior to and on the 20th December, 1803, it was possessed and occupied by John Latresse, who sold or exchanged it with Pierre Datcherute, by deed dated June 22d, 1810, which deed was produced (but not recorded).—(See Hunt's Minutes, No. 3, p. 86.)

In this case I am of opinion that survey No. 337 of Thomas Blondeau, founded on a concession in 1766, with ascertained limits, and which, on the proof of inhabitation since the settlement of St. Louis to 1813, was confirmed by the act of 29th April, 1816, should hold against survey No. 185 of Pierre Datcherute, the right of which rests on possession and occupation in 1803, proven in 1825, under the act of 26th of May, 1824.

SURVEYOR'S OFFICE,
ST. LOUIS, *May 26th*, 1847.

Returned to the recorder of land titles June 30th, 1862.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, 2*d December*, 1869.

This is to certify that the foregoing plat and description of Survey 337 of St. Louis lands, and the certificate of the approval thereof, and the statement of the survey F. R. Conway are correctly copied from pages 143 and 144 of the record book of surveys in St. Louis lands on file in this office.

ALBERT SIGEL,
U. S. Recorder of Land Titles for State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

No. 106.—Pardivant nous Don Pedro Piernas, capitaine d'infanterie, lieutenant-gouveneur des establissements des Illinois et ses dependancies, appartenant a sa majestie Catholique, fut present en la personne Thomas Blondeau, habitant, demeurant au poste St. Louis, lequel par ces presentes, a reconnu et confesse avoir ce jourd'hui vendu, cedé, quitté, transporté, et delaissé, dès maintenant et a toujours, et promet garanter de tous troubles, debtes douans hypothēques, evictions substitutions et autres empechements generalement quelconques ā Pierre Hebert, dit Lecompte, aussi habitant demeurant en ce dit poste St. Louis, a ce present stipulante et acceptant arquereur pour lui ses hoirs ou ayant cause, savoir: un terrein situé au sud de ce village St. Louis du coté de la Petite riviere, contenant par un bout cent

vingt pieds de large sur cent cinquante pieds de long sur lequel terrain est construit une petite maison ou cabanne de pieux en terre couverte en bardeaux, clos le tout sur toutes les faces, tenant par un des bouts a une rue qui separe les echores du Mississippi, par l'autre bout au terrain de Michel Lamy, d'un coté a une rue de traverse qui limite le terrain de Mr. de Volsay, et par l'autre coté au domaine du Roy; aînsi que le tout se poursint et comporte et étend de toute part, defond en comble, que le dit Pierre Hebert a du bien savoir et connaître pour l'avoir vu et visité et dont il est content, sans se rien reserver ou retenir de la part du dit Thomas Blondeau a qui le dit terrain appartient comme lui ayant été concedé par M. le commandant et judge de cette Province le cinq aut mil sept cent soixante six étant du Domaine du Roy, sans aueune charges, rentes ni redevances jusqu' á ce jour; pour en jouir, faire et disposer par le dit Pierre Hebert, dit Lecompte, ses hoirs ou ayant cause comme de chose a lui appartenante a commencer la jouissance des ce aujourd'hui. Cette presente vente ainsé faite moyennant le prix et somme de deux cents livres en castor et peaux de chevreuil prix de ce poste, que le dit Pierre Hebert promet et s'oblige bailler et payer au dit Thomas Blondeau, savoir, la somme de cent livres, dans le cours du printems de cette presente annee mil sept cent soixante douze, et la somme de cent livres le printems suivant, c'est a dire un an aprés, pour tous délais, a peine de tous depens dommages, et pour sureté de laquelle dite somme de deux cents livres, le dit Pierre Hebert a obligé affecté et hypothéqué, tous et uns chacuns ses biens meubles et immeubles presents et avenir, même par privilège special le dit terrain et maison hypothéquê, jusqu'au parfait payment; au moyen de quoi le dit Blondeau s'est demis, dessaysi et dévêtu du predit terrain et maison presentement vendus pour et au profit du dit Pierre Hebert, voulant qu'èl enjouisse et soit mis en possession par qui et ainsy qu'il appartiendra; c'ainsi a ètè convenu et accordé. Fait et passé a St. Louis, en la chambre du government, l'an mil sept cent soixante douze le sept Janvier, en presence du Sr. Melony Duralde et Sr. Joseph Labuxière, temoins a ce requis, qui ont avec le dit Thomas Blondeau signé ces presentes, et le dit Pierre Hebert a fait sa marque ordinaire ne sachant signer.

Marque marque de PIERRE ✕ HEBERT, dit Lecompte.

T. BLONDEAU.

LABUXIERE.

Temoin.

PIERNAS.

Recorded April 2, 1847.

S. D. BARLOW, *Recorder.*

[Translation.]

No. 106.—Before me, Don Pedro Piernas, captain of infantry, lieutenant-governor of the establishments of Illinois and dependencies, belonging to his Catholic majesty, personally ap-

peared Thomas Blondeau, an inhabitant residing at the post of St. Louis, who by these presents, has acknowledged and confessed to have this day sold, ceded, relinquished, transferred, and abandoned, now and forever, and promises to guarantee from all molestations, debts, dowers, mortgages, ejectments, entails, and all other encumbrances generally whatever, to Pierre Hebert, alias Lecompte, also an inhabitant residing at the said post of St. Louis, here present, contracting and accepting, purchaser for himself, his heirs, or legal representatives, viz: a piece of ground situated in the said village of St. Louis, on the side of the "Petite riviere," containing at one end one hundred and twenty feet in width by one hundred and fifty feet in depth; on which ground is built a small house or cabin of posts in the ground, covered with shingles, the whole enclosed on all sides, bounded at one of the ends *by a street which separates it from the banks of the Mississippi*, at the other end by ground of Michael Lamy; on one side by a cross street, which bounds the ground of Mr. De Volsay, and on the other side by the royal demesne, such as the whole now exists in all parts, from top to bottom, which the said Pierre Hebert says he well knows, having seen and examined it, and with which he is satisfied, without any reservation or hindrance on the part of said Thomas Blondeau, to whom the said ground belongs, having been granted to him by the commander and judge of this province the fifth of August, one thousand seven hundred and sixty-six, being part of the royal demesne, without any charges, rents, nor ground rents up to this day; to be held, managed, and disposed of by the said Pierre Hebert, alias Lecompte, his heirs or legal representatives, as a thing to him belonging, possession to commence from this day. This present sale thus made in consideration of the price and sum of two hundred livres in beaver and deer skins at the price of this post, which the said Pierre Hebert promises and binds himself to deliver and pay to the said Thomas Blondeau, viz: the sum of one hundred livres in the course of the spring of this present year, one thousand seven hundred and seventy-two, and the sum of one hundred livres in the following spring, that is to say, one year afterwards, at the very latest, under penalty of all costs and damages; and, as security for which said sum of two hundred livres, the said Pierre Hebert has bound, encumbered, and mortgaged all and each his goods, movables and unmovables, actual and future; also, by special privilege, the said house and ground mortgaged until the total payment; in virtue whereof the said Blondeau has relinquished, abandoned, and divested himself of the said ground and house just sold for and to the benefit of said Pierre Hebert, willing that he be put in possession and hold the same by whom and as it may concern. For thus it has been covenanted and agreed. Done and executed at St. Louis, in the government chamber, the year *one thousand seven hundred and seventy-two, the seventh of January*, in the presence of Melony Duvalde and Joseph Labuxiere, witnesses for this summoned,

who, with the said Thomas Blondeau, have signed these presents, and Pierre Hebert has made his customary mark, not knowing how to write.

Mark of PIERRE ✕ HEBERT, alias Lecompte.

T. BLONDEAU.

LUBUXIERE.

Witnesses.

PIERNAS.

STATE OF MISSOURI, COUNTY OF ST. LOUIS, *ss:*

I, the undersigned, for said county, certify that the foregoing instrument of writing is a true copy of a deed from T. Blondeau to P. Hebert, alias Lecompte, the translation, the date of recording, as the same remain of record in my office, in Arc., vol. 2, No. 1, page 86.

Witness my hand and official seal, this 29th November, 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

Survey Number One Hundred Eighty-five of Saint Louis Lands.

Plat and description of the survey of a lot, situated in block number forty-three of the town (now city) of St. Louis, in township forty-five, north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed by Joseph C. Brown, deputy surveyor, under his contract with the surveyor of the public lands in the States of Illinois and Missouri, dated the fifteenth of September, eighteen hundred thirty-five, it being the lot of sixty by one hundred fifty French feet, confirmed to Pierre Datcherute, under Jean Latresse, by the act of Congress of the thirteenth of June, eighteen hundred and twelve, the extent and boundaries whereof were proven before Theodore Hunt, United States recorder of land titles, on the twenty-fourth of November, eighteen hundred twenty-five, under the act of Congress of the twenty-sixth of May, eighteen hundred twenty-four, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.'"

For the interference of this survey with survey No. 337, see the statement at the end of the following description:

[See connected plat of blocks 43 and 44 prefixed.]

Description: Begin at the intersection of the western edge of First street with the southern edge of Mulberry street, the northeast corner of this lot and of the block.

Thence south thirty degrees and fifteen minutes west, along the western edge of First street—the eastern boundary of this lot—at sixty-four feet and two inches, the south-east corner of this lot.

Thence north sixty-four degrees and seven minutes west, along the southern boundary of this lot; at one hundred sixty feet and two inches the south-west corner of this lot, on the eastern boundary of the lot of Antoine Saugrain's legal representatives, survey number one hundred eighty-four.

Thence north thirty degrees and twenty-three minutes east, along the western boundary of this lot and the eastern boundary of the lot of Saugrain; at sixty-four feet and two inches the north-west corner of this lot and the north-east corner of the lot of Antoine Saugrain, on the southern edge of Mulberry street.

Thence south sixty-four degrees and seven minutes east along the southern edge of Mulberry street, the northern boundary of this lot; at one hundred sixty feet and five inches the beginning corner.

SURVEYOR'S OFFICE,
ST. LOUIS, *6th of May*, 1847.

The foregoing plat and description of survey number one hundred eighty-five of St. Louis lands are this day recorded, examined, and approved.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Statement relative to the claim under survey No. 185, in block No. 43, and the interfering claim under survey No 337, made in compliance with the instructions of the Commissioner of the General Land Office, of the 18th of April, 1846, to the Surveyor General in St. Louis.

Survey No. 185, Pierre Datcherute under Jean Latresse, 60 front by 150 deep. Claimed on the 24th November, 1825, before Theodore Hunt, the recorder of land titles, under the act of the 26th of May, 1824, as bounded east by the Mississippi river, leaving space for a tow, south-west by part of same square and north by south T street.

Michel Morin sworn: says he knows the lot claimed, and that prior to and on the 20th December, 1803, it was possessed and occupied by Jean Latresse, who sold or exchanged it with Pierre Datcherute, by deed, dated June 22, 1810, which deed was produced, (but not recorded.)—(See Hunt's Minutes, No. 3, p. 86.)

Survey No. 337, Thomas Blondeau—120 front by 150 French feet deep—concession to Thomas Blondeau on the 5th of August, 1766, by the Spanish officers St. Ange and Lefebre, bounded front by Main street, in the rear by the king's domain, on one side by the land of Mr. Devolsey, and on the other side by the king's domain.—(See Livre Terrien No. 1, folio 4; also, book F, p. 148, in the office of the United States Recorder of Land Titles.)

In the concession to Devolsey (on the 15th August, 1766, Liv. Terr. No. 1, p. 6), of 240 by 300 feet, (see block No. 42,) his lot is bounded on one side by a cross street, which divides it from the lot of Blondeau. Claim taken up by Recorder Bates on the 31st December, 1813, under the act of the 13th June, 1812. Testimony by A. Chouteau of the inhabitation of this lot since the establishment of St. Louis.—(Bates' Minutes, p. 140.) Confirmed by the act of Congress of the 29th April, 1816, to Thomas Blondeau's representatives to the amount conceded.—(See Bates' decision, book No. 1, p. 6, American State Papers, vol. III., p. 278, Duff Green's edition, 1834.)

In this case I am of opinion that survey No. 337, of Thomas Blondeau, founded on a concession in 1766 with ascertained limits, and which, on the proof of inhabitation since the settlement of St. Louis to 1813, was confirmed by the act of 29th April, 1816, should hold against survey No. 185, of Pierre Datcherute, the right of which rests on possession and occupation in 1803, proven in 1825, under the act of the 26th of May, 1824.

SURVEYOR'S OFFICE,
ST. LOUIS, *6th of May*, 1847.

Returned to the Recorder of Land Titles June 30, 1862.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *2d December*, 1869.

This is to certify that the foregoing plat and description of survey 185, of St. Louis lands, and the certificate of the approval thereof, and the statement of the surveyor, F. R. Conway, are correctly copied from pages 142 and 143 of the record book of surveys in St. Louis lands on file in this office.

ALBERT SIGEL,
U. S. Recorder of Land Titles for the State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

Testimony relating to town and village lots, out lots, and common-field lots in, adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Hobert, Carondelet, St. Schevicoe, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the territory of Arkansas, as directed by an act of Congress, passed May 26th, 1824.

THEODORE HUNT, *Recorder of Land Titles.*

Mere Ancienne Vieuve Hortiz claims a lot in the town of Saint Louis, in block No. 43, containing one hundred and twenty feet in front by three hundred in depth, deriving title from Eustache Caillou; produces a deed from said Eustache Caillou and wife, dated 3d June, 1812, to said widow Hortiz, *bounded east by Main street*, or a continuation of the same, west by Church street, south by South K street, and north by balance of square.

Pierre Chouteau, sen'r, being duly sworn, says, he knows the lot claimed, and that, twenty-three years ago and upwards, it was owned and occupied by Eustache Caillou, and that it has been possessed and occupied ever since. This deponent further states, it was a universal custom of the Spanish authorities, (so far as he has ever been acquainted,) in giving or granting lots fronting on the river, *to leave a reservation for a tow or road between the lots and the river.*

P. CHOUTEAU.

THEODORE HUNT, *Recorder L. T.*

Pierre Chouteau, being duly sworn, says, he came to this town about six months after the foundation of the town of Saint Louis, A. D. seventeen hundred and sixty-four, and has resided in the town ever since; that he is well acquainted with the grants made for barn lots by the Spanish authorities during this time; and that he is likewise well acquainted with the grants for barn lots made by the French authorities during the time they possessed this country; and that the French granted many more barn lots than the Spanish authorities; that it never was the custom to give more for a barn lot than from sixty to eighty feet square.

P. CHOUTEAU.

Sworn to before me, May 18th, 1825.
THEODORE HUNT, *Recorder L. T.*

OFFICE OF U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *2d December*, 1869.

I certify that the foregoing is correctly copied from the book on file in this office, containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles in the state of Missouri, pursuant to the first section of the act of Congress of the 26th May, 1824, supplementary to the act of 13th June, 1812, entitled "An act making further provision for settling the claims to land in the territory of Missouri."

ALBERT SIGEL,
U. S. Recorder of Land Titles for the State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

Registry of certificates of confirmation on town lots, out lots, and common-field lots issued by the recorder of land titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity in feet.
Mere Ancienne Veuve Hortiz, claiming under Eustache Cailloux.	1825. May 18th.	Town of St. Louis.	Bounded east by Main street, or a continuation of the same, west by Church street, south by South K street, and north by balance of the square.	120 front; 300 deep.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, 2*d December*, 1869.

I certify that the above is correctly copied from the original list on file in this office, known as Theodore Hunt's list of proofs, under the act of 26th May, 1824.

ALBERT SIGEL,
U. S. Recorder of Land Titles for the State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

Survey Number One Hundred Eighty-Six of Saint Louis Lands.

Plat and description of the survey of a lot, situated in block number forty-three, of the town (now city) of St. Louis, in township forty-five north of the base line, range seven east of the fifth principal meridian in the State of Missouri, executed by Joseph C. Brown, under his contract with the surveyor of the public lands in the states of Illinois and Missouri, dated the fifteenth of September, eighteen hundred and thirty-five, this being the lot of one hundred twenty by three hundred French feet confirmed to Mère, ancienne Veuve Hortiz, under Eustache Cailloux, by the act of Congress of the thirteenth of June, eighteen hundred and twelve, the extent and boundaries whereof were proven before Theodore Hunt, United States recorder of land titles, on the eighteenth of May, eighteen hundred twenty-five, under the act of Congress of the twenty-sixth of May, eighteen hundred twenty-four, entitled an act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

[See connected plat of blocks 43 and 44 prefixed.]

Description: Begin at the intersection of the northern edge of Lombard street with the eastern edge of Second street, the south-west corner of this lot and of the block.

Thence north thirty degrees and thirty minutes east, along the eastern edge of Second street, the western boundary of this lot, at one hundred thirty-seven feet ten and three quarters inches the north-west corner of this lot and the south-west corner of the lot of Antoine Saugrain's legal representatives, survey numbered one hundred and eighty-four.

Thence south sixty-one degrees and thirty-nine minutes east, along the northern boundary of this lot and the southern boundary of the lot of Antoine Saugrain; at one hundred sixty feet and five inches, the south-east corner of the lot of Antoine Saugrain and the south-west corner of the lot of Thomas Blondeau's representatives, survey number three hundred thirty-seven; continue the same course along the southern boundary of the lot of Thomas Blondeau; at three hundred twenty feet and three inches, the north-east corner of this lot and the south-east corner of the lot of Thomas Blondeau, on the western edge of First street.

Thence south thirty degrees and fifteen minutes west, along the western edge of First street, the eastern boundary of this lot, at one hundred fifty-one feet ten-and-a-half inches, the southeast corner of this lot, at the intersection of the western edge of First street with the northern edge of Lombard street.

Thence north fifty-nine degrees and eleven minutes west, along the northern edge of Lombard street, the southern boundary of this lot, at three hundred twenty feet and ten inches, the beginning corner.

SURVEYOR'S OFFICE, ST. LOUIS, *6th of May*, 1847.

The foregoing plat and description of survey number one hundred eighty-six, of Saint Louis lands, are this day recorded, examined, and approved.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Returned to the recorder of land titles June 30th, 1862.

OFFICE OF UNITED STATES RECORDER OF LAND TITLES,
ST. LOUIS, *2d December*, 1869.

This is to certify that the foregoing plat and description of survey 186, and the certificate of the approval thereof, are correctly copied from page 150 of the record book of surveys in St. Louis lands on file in this office.

ALBERT SIGEL,
U. S. Recorder of Land Titles for the State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

No. 794 B.—Con permission de los hered's de Duchouquet y Lamy en la villa de St. Luis de Ilinois a los veinte y seis dias del mes de Junio del año de mil de ochocientos, a defecto de escribano publico en esta referida villa ante mi Don Carlos Dehault Delassus, Ten'te Coronel de infanteria y Ten'te de Governador de

esta alta Luisiana, y en presencia de los testigos de assistencia Don Pedro Laffillard y Joseph Horttiz estuvo presente en su persona Don Pascual Leon Cerré, vecino y del comercio de esta referido villa, elqual por estas presentes declara y confessa haber cydio vendido, cedido, transportado, y abandona de tanto para hora comepara siempre y promete haber gozar y preservar de todas deudas, duarios, hipotecas, ejecciones, substitutiones, y generalm'te todos quesento pudiesen â Monsieur Eustache Callou, áqui presente, stipulando, aceptando y adquiriendo para el y sus herederos ou otros que representen en derecho, un terreno conteniendo ciento y viente pies de frente y en profondor de una calle a otra, situado en esta suso dho villa de St. Luis suprimer frente a la segunda calle de ella, por detras a la que pasa delante del rio Misisipy, y linda del lado del norte al terreno de Juan Bap'ta Lebeau, y del sud a una calle de traviesa que separa el de Fran'co Tayon, el referido terreno tal como se comporta en este dia y que el sor adquiriente declara haber visto, y visitado de elque se dá por contento y satisfacto, sin nada retenerse ou reserbarse adquiriendo lo segun y conforme a los leyes por el precio y suma de cien pesos, payables en el mes de Junio del año proximo que viene de mil ochocientos uno, en dinero corriente de *este* pais ô en pelleteria al precio corriente y a la receta de este referido pais; y hasta la entera satisfaction el s'r adquiriente no podra enagenar, ni vender el dho terreno que dando este hipotecado para res guardo de la dho suma como tambien todas los obras quese hallen en el echas a la epoca del payam'te; ainsi han convenido y accordado, prometiendo, &c., obligando, &c. Esto y pasado este contrato en nuestra salo de governo en presencia delos infra scriptos testigos de assistencia que han firmado con migo el referido Teniente de Governador estas presentes, y los partes a excepcion de S'or Eustache Callou adquiriente que por nosarer escriber ha echo una cruz por marca despues de lectura echo el mismo dia mes y ano que ut supra.

PASCAL LEON CERRÉ.
Senal de EUSTACHE + CALLOU.
JOSEPH HORTTIZ.
P. LAFILLARD.

CARLOS DEHAULT DELASSUS.

STATE OF MISSOURI, COUNTY OF ST. LOUIS:

I do hereby certify in my name and as authorized by the heirs and legal representatives of Duchouquet and Lamy, to have received, about twenty years ago, of Joseph Hortiz, the sum of one hundred dollars, full and entire amount of the mortgage executed by the foregoing instrument of writing.

St. Louis, February 7th, 1822. Cerré.
Recorded 14th August, 1832.
Delivered to Pierre Callou 1st September, 1832.

ARCHIBALD GAMBLE, *Recorder.*

[Translation.]

By permission of the heirs of Duchouquet and Lamy, in the town of St. Louis, in Illinois, the twenty-sixth day of the month of June, in *the year one thousand eight hundred*, in default of a notary public, in said city, before me, Don Carlos Dehault Delassus, lieutenant-colonel of infantry and lieutenant-governor of this Upper Louisiana, and in presence of the attending witnesses, Pedro Laffillard and Joseph Horttiz, personally appeared Don Pascual Leon Cerré, an inhabitant and merchant of this said city, who, by these presents, acknowledges and confesses to have this day sold, ceded, transferred, and abandoned, now and forever, and promises to place in possession and guarantee from all debts, dowers, mortgages, ejectments, entails, and all other incumbrances generally whatever, to Mr. Eustache Callou, here present, contracting, accepting, and purchasing for himself, his heirs and legal representatives, a piece of ground, containing one hundred and twenty feet front, and in depth from one street to the other, situated in this said town of St. Louis, *its chief front on Second street, the rear on that which passes in front of the Mississippi, bounded on the north by ground of Juan Bap'ta Lebeau, and on the south by a cross street which separates it from Francois Tayon*, such as it exists this day, and which the purchaser declares he has seen and examined and is satisfied therewith, without any drawback nor reservation, acquiring it conformably to the laws, for the price and sum of one hundred dollars, payable in the month of June of the next coming year, one thousand eight hundred and one, in current money of this country, or in peltries at the current rate and of good quality; and until full payment the purchaser cannot alienate nor sell the said ground, which remains mortgaged for the security of said sum, together with all the improvements thereon existing at the time of payment; thus they have covenanted and agreed, promising, &c., binding, &c. This contract made and executed in our government hall, in presence of the undersigned witnesses, who have signed with me, the lieutenant-governor, these presents, and the parties, with the exception of Eustache Callou, who, declaring he did not know how to write, has made a mark of a cross after the same had been read, the same day, month, and year as above.

CARLOS DEHAULT DELASSUS.
PASCAL LEON CERRÉ.
Mark of EUSTACHE + CALLOU.

JOSEPH HORTTIZ.
P. LAFFILLARD.

STATE OF MISSOURI, COUNTY OF ST. LOUIS:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from P. L. Cerré to E. Callou,

the date of recording and the translation thereto annexed, as the same remains of record in my office, in archives, vol. 1, page 194.

Witness my hand and official seal, this 29th day of November, 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

Survey Number Three Hundred and Ninety-three of St. Louis Lands.

Plat and description of the survey of a lot of ground, situated in block number forty-four, of the town (now city) of St. Louis, in township forty-five north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed by Joseph Judest, on the 27th and 28th August, 1855, under instructions from the surveyor-general for Illinois and Missouri, dated the 18th of the same month and year; this being the lot of sixty by one hundred and twenty French feet, conceded to Louis Ride on the 15th April, 1779, by Fern'do de Leyba, lieutenant-governor of Upper Louisiana, (see Livre Terrien No. 3, p. 23,) and in conformity with the opinion of Frederick Bates, U. S. recorder of land titles for Missouri, which was given in favor of this claim, in his report to the Commissioner of the General Land Office, dated the 2d February, 1816, it was confirmed to "Louis Ride's representatives" by the act of Congress of the 29th April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana, and in the Territory of Missouri."—(See Am. State Papers, vol. 3, p. 280, Duff Green's edition, and U. S. Statutes at Large, vol. 3, p. 328, Little & Brown's edition.)

[See connected plat of blocks 43 and 44 prefixed.]

Description: Beginning at a stake set in the south-western edge of Lombard street, one hundred sixty feet and five inches south fifty-nine degrees and eleven minutes east from the northern corner of block number forty-four, the northern corner of this survey, and the eastern corner of the lot confirmed to the representatives of Antoine Morin under Louis Ride, survey number three hundred and ninety-two; thence south fifty-nine degrees and eleven minutes east with the south-western edge of Lombard street, the north-eastern boundary of this survey, one hundred sixty feet and five inches to a stake, the eastern corner of this survey and of the block as surveyed by Joseph C. Brown under his contract with the surveyor-general of the fifteenth September, one thousand eight hundred and thirty-five, from which the present eastern corner of the block on the north-western edge of Main or First street, as recently established by the authorities of the city of St. Louis, bears south fifty-nine de-

grees and eleven minutes east, distant one hundred and four feet and one inch; thence south forty-one degrees and thirty minutes west with the south-eastern boundary of this survey and of the block as surveyed by Jos. C. Brown, one hundred thirty-two feet and three inches to a stake, the southern corner of this survey, and the eastern corner of a lot confirmed to Joseph Navalez under Francoise Leveille, survey number three hundred and ninety-five; thence north fifty-eight degrees and fifty-six minutes west with the south-western boundary of this survey and the north-eastern boundary of the Navalez lot, one hundred thirty-five feet to a stake, the western corner of this survey and the eastern corner of a lot confirmed to Charles Leveille's representatives, survey number three hundred and ninety-four; thence north thirty degrees and thirty minutes east with the north-western boundary of this survey, one hundred twenty-nine feet and five inches to the beginning corner.

OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS AND MISSOURI,
ST. LOUIS, *September 13th*, 1855.

Survey number three hundred and ninety-three of the series of St Louis lands, as platted and described in the foregoing record, has been examined and is hereby approved.

JOHN LOUGHBOROUGH,
Surveyor-General.

Returned to the U. S. Recorder of land titles January 16th, 1863.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *2d December*, 1869.

This is to certify that the foregoing plat and description of survey No. 393 of Saint Louis lands, and the certificate of approval thereof, are correctly copied from pages 253 and 254 of the record-book of surveys in Saint Louis lands on file in this office.

ALBERT SIGEL,
U. S. Recorder of Land Titles for the State of Missouri.

[5-ct. U. S. Internal Revenue stamp, canceled.]

Articles of agreement made and entered into by and between Arthur Park, of the county of St. Louis, in the Territory of Missouri, son of Anthony Park, and Mary, his wife, of the district of New Bury, in the State of South Carolina, of the one part, and Pelagie Charleville, widow of Francois Tayon, and daughter of Baptiste Charleville, said Pelagie of the county of St. Louis, in the Territory of Missouri, of the other part, witnesseth: Whereas a marriage is intended to be shortly had and solemnized between the said Arthur Park and the said Pelagie Charleville, widow of Francois Tayon, the aforesaid parties, in case the said marriage shall take place, have agreed, and by these presents do agree, that all the property, goods and chattels,

lands and tenements shall be in common between them during their joint lives, and after the death of either of said parties, shall be vested, in full property, in the survivor. In case that there shall be no child or children born of the said marriage, and living at the time of the death of either of the said parties, and in case there shall be any child or children, and the wife shall be the survivor, then the whole of the personal property shall belong to her forever, and the full and peaceable enjoyment of one-half of all the real property shall be vested in her for and during her life-time, and the full and peaceable enjoyment of the other half of the real property shall be vested in her until the children of the said marriage shall become of full age, that is to say, then giving unto each and every child, as they shall respectively become of full age, if male or female, until she or they shall get married or become of full age, her or their equal proportion or share of the said other moiety of the real estate. In testimony whereof, the parties aforesaid have hereunto affixed their hand and seal at St. Louis this fifth day of March, one thousand eight hnndred and nineteen.

ARTHUR PARK. [*Seal.*]

her
PELAGIE × CHARLEVILLE. [*L. S.*]
mark.

Signed and sealed in the presence of—
FREMON DELAURIERE.

GEORGE Y. BRIGHT.

TERRITORY OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

Be it remembered, that on the fifth day of March, in the forty-third year of the independence of the United States of America, A. D. one thousand eight hundred and nineteen, before me Francis M. Guyol, one of the justices of the peace in and for the county of St. Louis aforesaid, personally appeared the within-named Arthur Park and Pelagie Charleville, widow of Francois Tayon, and both being well known to me as the persons described in the foregoing instrument of writing, acknowledged it to be their, and each of their, respective act and deed, hand, and seal, for the purposes therein contained. In testimony whereof, I have hereunto set my hand and affixed my seal at St. Louis, on the date in this behalf above written.

F. M. GUYOL, *J. P.* [L. S.]

Recorded August the 20th, 1819.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of an instrument in writing executed by Arthur Park and Pelagie Charleville, together with the acknowl-

edgment, date of recording thereof, as the same remains on record in my office in book "H," p. 434.

Witness my hand and official seal, this 29th day of November, 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

This indenture, made this twenty-ninth day of September, in the year eighteen hundred and twenty-four, by and between Arthur Park of the one part, and Philip Rocheblave of the other part, both of the city of St. Louis, in the State of Missouri, witnesseth, that the said Arthur Park, for and in consideration of the sum of eleven hundred dollars, to him in hand paid by the said Rocheblave, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell unto the said Philip Rocheblave the one undivided half of the following tracts of land, situate in the said county, to wit; a certain tract of land, containing two hundred and sixty-six arpens and two thirds in superficies, or twenty arpens upon one hundred and twenty-three and one-third perches, being the same tract of land conveyed by the Widow Charleville to Francois Tayon, by a deed bearing date upon the fourth day of April, in the year eighteen hundred and eleven, and duly recorded in the clerk's office of said county, in book C, page 260 following. *Also of a certain messuage or lot in the city of St. Louis, on Church street, containing the quantity of one hundred and thirty-five feet front upon three hundred in depth, French measure, bounded on the south by a lot, the property of a free negro named Leveille, on the north by a cross street, which separates the said lot from a lot, the property of Joseph Hortiz, on the east by Main street, and on the west by Church street,* being the same convey by Alexis Lalande and wife to the widow Charleville, by a deed bearing date on the twenty-fifth day of July, in the year eighteen hundred and fifteen, to have and to hold the said undivided half of the said real estate unto the said Rocheblave, his heirs and assigns forever; and the said Arthur Park for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said Philip Rocheblave, his heirs and assigns, that he the said Arthur and his heirs, the said tracts of land above bargained and sold, will warrant and forever defend to the said Rocheblave, his heirs and assigns, against all persons whatsoever.

In testimony whereof, the said Arthur Park hath hereunto set his hand and seal, the day and year first above written.

ARTHUR PARK. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOS. MCGUIRE.
BERNARD GELHALY.

STATE OF MISSOURI, } ss.
COUNTY OF ST. LOUIS. }

Be it remembered, that on this first day of October, eighteen hundred and twenty-four, before me, a Justice of the Peace within and for the county aforesaid, personally came and appeared Arthur Park, and acknowledged the foregoing instrument of writing as for his voluntary act and deed for the purposes therein contained.

Taken and certified, the day and year first above written.

THOS. McGUIRE, *Justice of the Peace.*
ARCHIBALD GAMBLE, *Clerk.*

Recorded *October 2d*, 1824.

STATE OF MISSOURI, } ss.
COUNTY OF ST. LOUIS. }

I, the undersigned, recorder of said county, certify that the foregoing is a true copy of a deed made by Arthur Park to P. Rocheblave, together with acknowledgment, date of filing and recording thereof, as the same remains of record in my office in book M, p. 114.

Witness my hand and official seal, this 29th day of Nov., 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

This indenture, made this fourteenth day of July, in the year of our Lord one thousand eight hundred and twenty-five, between Francois Tayon, of the one part, and Arthur Park, and Pelagie, his wife, late Pelagie Tayon, of the other part, all of the city and county of St. Louis, and State of Missouri, heirs-at-law of Francois Tayon, late of said county, deceased: Whereas the said parties now stand possessed and seized in fee simple, as tenants in common, of the following property, to wit: a certain tract or parcel of land, situate, lying, and being on the river des Peres, in the county of St. Louis aforesaid, and about ten miles westward by direction from the city aforesaid, and containing two hundred and sixty-six arpents and two-thirds of an arpent, French measure, bounded southwardly by lands of the United States, northwardly by lands of Fremon Delauriere, eastwardly by lands of Joseph Charleville, and westwardly by lands of John P. Dungan, being a part of a tract of sixteen hundred arpents originally granted to Thereze Banois et Francoise Brazeaux Charleville.

Also a certain lot, piece, or parcel of ground, lying and being situate in said city of St. Louis, containing one hundred and twenty feet more or less in front, by about three hundred feet more or less in the rear, bounded eastwardly by road passing along the river Mississippi, northwardly by a cross-street, westwardly by Church street, and southwardly by lot of Leveille, and which Church street separates said lot from the lot of Cailou and Morin, also a negro man named Canadien, also a negro woman named Keity, and also a certain mulatto

girl, of the age of about nine years, named Sophia, together with some little household furniture. Now, this indenture witnesseth, that the parties to this present indenture have unanimously agreed to make, and by these presents do make, a just, full, equal, perfect, and absolute partition and division between them of and in the aforesaid property, according to their respective shares and interest therein, in manner following, that is to say, that the said Francis Tayon and his heirs shall have all that certain lot, piece, or parcel of ground, with the dwelling-house thereon in said city of St. Louis, above described. together with the above-mentioned mulatto girl Sophia as slave for life, the said slave Sophia to be and remain as servant to said Pelagie during the life-time of said Pelagie, and after her decease to be the absolute property of said Tayon, by his paying therefor unto said Park seventy-five dollars, to have, hold, and enjoy the same unto the said Francis Tayon, his heirs and assigns, forever, as his full part, share, and dividend of, and in all and singular the premises, and the said Arthur Park, and Pelagie, his wife, for themselves and their heirs, give, grant, allot, assign, set over, release, and confirm unto the said Francis Tayon, and to his heirs and assigns forever, the said described piece or lot of ground, and slave, Sophia, hereby allotted, with the appurtenances, to have and to hold to him, the said Francis Tayon, his heirs and assigns, to the only proper use and behoof of him, the said Francis Tayon, his heirs and assigns, forever in severalty; and the said Arthur Park, and Pelagie, his wife, and their heirs, shall have the aforesaid described tract of two hundred and sixty-six arpents and two-thirds of an arpent, above mentioned, together with the household furniture, to hold and enjoy the same unto the said Park, and Pelagie, his wife, their heirs and assigns, forever, as their full part, share, and dividend of and in all and singular the premises, and the said Francis Tayon doth, by these presents, for him and his heirs, give, grant, allot, assign, set over, release, and confirm unto the said Arthur Park, and Pelagie, his wife, and to their heirs and assigns, forever, the said tract of land and household furniture allotted to them, with the appurtenances, to have and to hold to them, the said Park, and Pelagie, his wife, their heirs and assigns, forever in severalty; and the said Francis Tayon, for himself, his heirs, executors, and administrators, doth covenant, promise, and grant, to and with the said Arthur Park, and Pelagie, his wife, that they, the said Park and Pelagie, shall, or lawfully may, from time to time, and at all times hereafter, and their heirs and assigns forever, freely, peaceably, and quietly have, hold, occupy, possess, and enjoy the said tract of two hundred and sixty-six arpents and two-thirds of an arpent, above described, and household furniture, allotted with the appurtenances, and receive and take the rents, issues, and profits thereof, without the let, suit, trouble, molestation, interruption, or denial of him, the said Francis Tayon, his heirs or assigns, or of any other person or persons whatsoever, lawfully claiming, or to

claim by, from, or under him, them, or any of them, or by or with his, their, or any or either of their acts, means, consent, privity, or procurement; and the said Arthur Park, and Pelagie, his wife, for themselves, their heirs, executors, and administrators, do covenant, promise, and grant, to and with the said Francis Tayon, that he, the said Francis Tayon, his heirs and assigns, forever, shall or may, lawfully, from time to time, and at all times hereafter, freely, peaceably, quietly, have, hold, and occupy, possess, and enjoy the said house and lot, above described, and slave Sophia, allotted with the appurtenances, and receive and take the rents, issues, and profits thereof, without the let, suit, trouble, molestation, interruption, or denial of them, the said Arthur Park, and Pelagie, his wife, their heirs or assigns, or of any other person or persons whatsoever, lawfully claiming, or to claim by, from, or under them, or any of them, or by or with their, or any of their, or either of their acts, means, consent, privity, or procurement, and lastly, it is covenanted and agreed upon, that the two above-mentioned slaves, to wit, Canadien and Keity, shall be sold for the use and benefit of the contracting parties, as soon as they come into the possession of them, or either of them, their heirs, attorneys, or assigns, and the proceeds thereof to be equally divided between them, the one-half of said proceeds for the said Arthur Park, and Pelagie, his wife, and the other half for said Francis Tayon, his heirs or assigns. The names of Joseph Charleville and John P. Dungan interlined before signing.

In witness whereof, the parties to these presents have interchangeably signed and sealed these presents on the day, month, and year first above written.

FRANCIS TAYON. [*L. S.*]
ARTHUR PARK. [*L. S.*]
PELAGIE + (her mark) PARKS. [*L. S.*]

Signed, sealed, and delivered in the presence of—
ROBERT MCCLOUD.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

Before me, the undersigned, judge of the probate court within and for the county of St. Louis, State of Missouri, personally came and appeared the within named Francis Tayon, Arthur Park, and Pelagie Park, his wife, to me well known, and acknowledged the foregoing instrument in writing to be their, and each of their act and deed, hands and seals, for the purposes therein contained. The said Pelagie, wife of said Arthur, being first by me examined separate and apart from her said husband, and by me made acquainted with the contents thereof, declares that she executed the same freely, voluntarily, of her own free will

and accord, without fear, restraint, constraint, or undue influence of her said husband.

[*L. S.*] In testimony whereof, I have hereunto set my hand and official seal on the day and date of said act and deed.

M. P. LEDUC, *J. P.*

Received, St. Louis, January 28th, 1826, the sum of seventy-five dollars, mentioned in the within deed of partition, being the balance on the within mentioned slave Sophia, belonging to Francis Tayon.

ARTHUR PARK.

Test: M. P. LEDUC.
Recorded February 26th, 1826.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of an instrument in writing made between Francis Tayon and Arthur Park and wife, together with acknowledgment, date of filing and recording thereof, as the same remains of record in my office in book M, p. 443.

Witness my hand and official seal this 29th day of November, 1869.

JULIUS CONRAD,
Recorder.

[SEAL.]
[5-ct. U. S. Internal Revenue stamp, canceled.]

This deed, made the twenty-first day of August, in the year of our Lord one thousand eight hundred and thirty-two, between Francois V. Tayon of the first part and Hypolite Papin of the other part, both of the city and county of St. Louis and State of Missouri, witnesseth, that the said Francois V. Tayon, for and in consideration of the sum of five hundred dollars, to him in hand paid by the said Hypolite Papin, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, and thereof and every part and parcel thereof acquits and forever discharges the said Hypolite Papin, his heirs and assigns, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Hypolite Papin, his heirs and assigns forever, all that certain lot, piece, or parcel of ground, with the appurtenances, lying and being situate in the city of St. Louis, aforesaid, in block No. (44) forty-four, on the plat of said city, and containing one hundred and twenty feet, French measure, fronting westwardly on Church street and running eastwardly three hundred feet like measure, be the same more or less, bounded westwardly by the said Church street or Second street, northwardly by Lombard street, eastwardly by the river Mississippi *or street if any there be*, and southwardly by lot formerly of Leveille, free negro man, it being the same lot, piece, or parcel

of ground which the said Francois V. Tayon purchased from Joseph Charleville and Victoire his wife, by deed bearing date the eighteenth day of August, in the year of our Lord one thousand eight hundred and thirty-two, and the same on which Francois Tayon lived and died. To have and to hold the said granted, bargained, and sold premises, together with all and singular the privileges, heriditaments, and appurtenances to the same belonging or in any wise appertaining, unto him the said Hypolite Papin, his heirs and assigns, and to his and their proper and only use, benefit, and behoof forever, free and clear of all incumbrances whatever.

In witness whereof, the said Francois V. Tayon hath hereunto set his hand and affixed his seal, at St. Louis, aforesaid, on the day, month, and year first above written.

[SEAL.] F. V. TAYON.

Test:
M. P. LEDUC,
P. D. PAPIN.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

Be it remembered, that on this twenty-first day of August, in the year of our Lord, one thousand eight hundred and thirty-two, before me, Mary Philip Leduc, a Justice of the County Court, within and for the county aforesaid, came Francois V. Tayon, who is personally known to me to be the person whose name is subscribed to the above instrument in writing, as having executed the same, and acknowledged the said instrument to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

M. P. LEDUC,
Justice County Court, St. Louis County.

Recorded 21 August, 1832.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. } *ss.*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed made by Francois V. Tayon to H. Papin, together with acknowledgment and date of record thereof, as the same remains of record in my office in book S, p. 119.

Witness my hand and official seal, this 29th day of Nov., 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

This deed, made the twelfth day of September, in the year of our Lord one thousand eight hundred and thirty-four, between Hypolite Papin amd Josephine his wife, grantors of the first part, and Joseph Stearns and William Risley, grantees of the second

part, all of the city and county of St. Louis, in the State of Missouri, witnesseth, that the said grantors, for and in consideration of the sum of eight hundred dollars, to them in hand paid by the said grantees, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said grantees, their heirs and assigns, all that certain lot, piece, or parcel of ground lying and being situate in the city aforesaid, in block No. (44) forty-four on the plat of said city, and containing one hundred and twenty feet French measure, fronting westwardly on Second or Church street, and running eastwardly three hundred feet like measure, be the same more or less, bounded westwardly by said Second or Church street, northwardly by Lombard street, *eastwardly by the river Mississippi or a street if any there be*, and southwardly by lot formerly of Leveille, free negro man. It being the same lot, piece, or parcel of ground which the said Hypolite Papin purchased from Francois V. Tayon by deed bearing date the twenty-first day of August, in the year of our Lord one thousand eight hundred and thirty-two, and to be found of record in the recorder's office of the county aforesaid, book S, page (119) one hundred and nineteen, and following, to have and to hold the said granted, bargained, and sold premises, together with all and singular the privileges, heriditaments, and appurtenances to the same belonging or in any wise appertaining, unto them the said grantors, their heirs and assigns, and to their proper and only use, benefit, and behoof, as tenants in common and not as joint tenants, forever, free and clear of all incumbrances whatever.

In witness whereof, the parties to these presents have hereunto set their hands and seals on the day, month, and year in this behalf first above written.

HY'TE PAPIN, [SEAL.]
MANETTE PAPIN, [SEAL.]

Witnesses: THEODORE PAPIN, G. P. CERRE.

STATE OF MISSOURI, } *ss.*
COUNTY OF ST. LOUIS. }

Be it remembered, that on this twelfth day of September, in the year of our Lord one thousand eight hundred and thirty-four, before me, Mary Philip Leduc, one of the Justices of the County Court, within and for the county aforesaid, came Hypolite Papin and Josephine his wife, both personally known to me to be the same persons whose names are subscribed to the above instrument in writing, as having executed the same, and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned. She, the said Josephine, being by me first made acquainted with the contents thereof, and examined separate and apart from her said husband, whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntary, freely, and without compul-

sion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

M. P. LEDUC,
Justice County Court, St. Louis Co.

Recorded 22d September, 1834.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, } *ss.*
COUNTY OF ST. LOUIS. }

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed made by Hypolite Papin and wife to Jos. Stearns et al., together with acknowledgment and date of recording thereof, as the same remains on record in my office in book U, p. 42.

Witness my hand and official seal, this 29th day of Nov., 1869.

[SEAL.] JULIUS CONRAD, *Recorder.*

[5-ct. U. S. Internal Revenue stamp, canceled.]

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 147. { THE ST. LOUIS PUBLIC SCHOOLS, *Pl'ff in Error*, vs. D. R. RISLEY AND OTHERS.

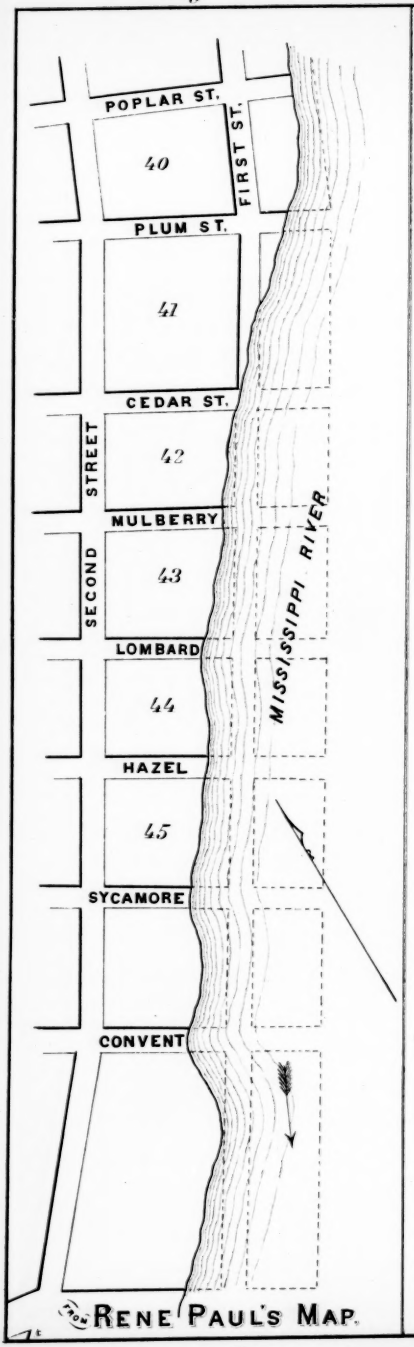
No. 148. { THE ST. LOUIS PUBLIC SCHOOLS, *Pl'ff in Error*, vs. MARY SCHOENTHALER AND OTHERS.

Brief for Plaintiff in Error.

M. BLAIR,
F. A. DICK,
For Plaintiff in Error.

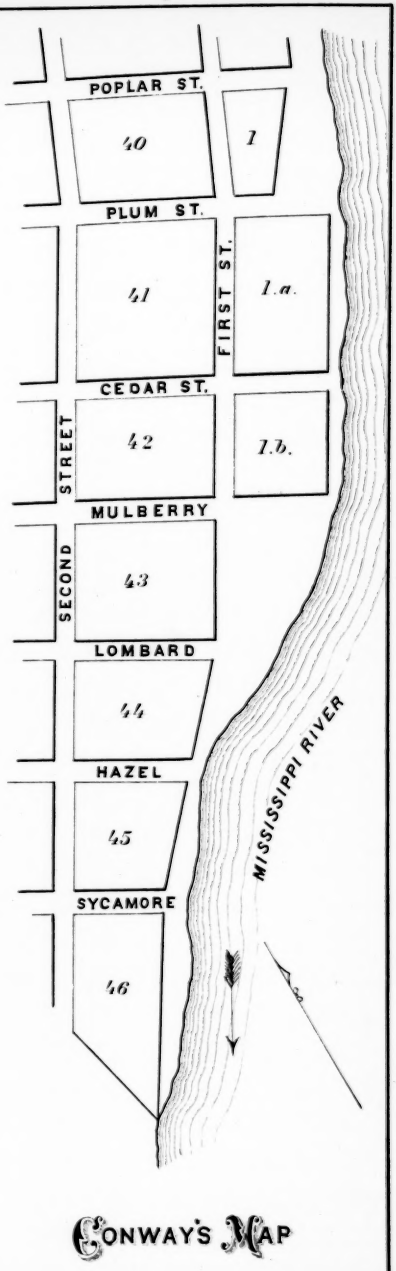
J. L. Pearson, Printer, corner 9th and D streets.

Fig. 1.



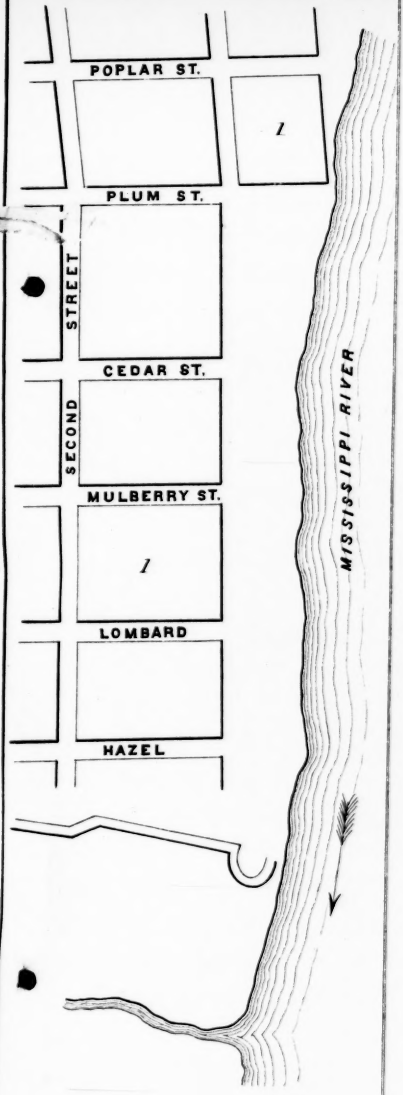
From RENE PAUL'S MAP.

Fig. 2.



CONWAY'S MAP

Fig. 3.



CHOUTEAU'S MAP

Fig. 4.

Present Condition of the Property.

J.E. Gainey Lith. Wash.n D.C.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 147. { THE ST. LOUIS PUBLIC SCHOOLS, *Pl'ff in Error*, vs. D. R. RISLEY AND OTHERS.

No. 148. { THE ST. LOUIS PUBLIC SCHOOLS, *Pl'ff in Error*, vs. MARY SCHOENTHALER AND OTHERS.

Brief for Plaintiff in Error.

These are suits by the Public Schools brought in the state court to recover block No. 856 in the city of St. Louis; No. 147 for the northern 160 feet running from Main street east to Front street, bounded north by Lombard street; and No. 148, to recover a lot of sixty feet next, south of it.

The plaintiff gave in evidence assignments to it of this land as set out on page 12 of No. 147, and page 10 of No. 148, as public land reserved for the use of schools by the second section of the act of Congress of 13 June, 1812, 2 S., 748, and granted by acts of 26 May, 1824, 4 S., 52, and 27 January, 1831, 4 S., p. 435.

Judgment below was for the defendants, and the cases are here on writ of error under 25th section of the judiciary act.

The defendants claim title under section one of the same act of Congress of 13 June, 1812. The evidence shows that the entire block in question has been formed, since about the year 1844 by alluvial deposits; and that block

44, which lies back of No. 856, was prior to that time the front block facing the river; and that the river, prior to 1844, even encroached upon block 44, so that the eastern line of that block was submerged land, covered by water.

After 1844 the city of St. Louis constructed streets both sides of block 44, running into the river, and for a distance below this block, and after this the alluvial deposit became very rapid; so that while in 1844 there was no street actually above water east of second street, since then two streets east of second street have been laid out on new made ground, namely, Main street, bounding block 44 on the east, and block 856 on the west, and Front street, which bounds block 856 on the east: there is also now above water, caused by this alluvial deposit, a wharf to the east of Front street.

The plaintiff insists that, by the plan on which the old Spanish town was laid out, there was actually a margin of shore in front of the old Spanish block, which was reserved for public use as a landing and street, and that the title to this public land, by virtue of the treaty, vested in the United States on the cession of Louisiana, and therefore was not, by the act of 1812, vested in individual lot owners.

The defendants claim that their lots in the old Spanish town, in block 44, actually extended to the river, and were occupied by them to the water's edge, and that thereby the act of 1812 vested title to the main channel in the individual owners, by virtue of such possession, and that the accretion belongs to such individual owners.

The two cases being nearly similar are included in one statement. The defendants' titles were as follows:

In Risley's case, No. 147, which is for the northern 160 feet, bounded north by Lombard street, the defendant offered no *record* evidence of title in himself. His evidence was the testimony of witnesses to prove the possession of a lot prior to 20th December, 1803, under the 1st section of the act of 13th June, 1812, which lot, as

he contends, fronted on Second street, and extended eastwardly to the river, whatever that depth might be. This parol proof is on pages 19, 20, 21, 22.

The defendant also gave in evidence a concession to Charles Leveille for the lot adjoining his on the south, dated March 1, 1788, being for a lot 60 feet front by 150 in depth, bounded on one side by Louis Ride, on the other by the King's domain, on the rear by the Mississippi, and on the main front by Second street, (page 25;) also, Paul's plat and other evidence, stated on page 25, and from page 27 to page 44, tax receipts to show the extent of the lot.

This evidence was offered to show that the lot of defendant extended to the river.

The plaintiff, in support of the action of the public officers assigning the land to them, and to show that the lot, which was claimed by defendant as a town lot under the act of 1812, did not cross the eastern line of block 44 and extend to the river, gave evidence to prove that the town was laid out on an established plan, in which were designated blocks and lots of a uniform size, (designated in the act of 1812 as town lots,) streets, and public places, including a public street and landing, lying in front of the lot of defendant, in common with other river front lots, and which was its eastern boundary.

This evidence was first Chouteau's map of St. Louis, (page 45,) and the opinion of the supreme court of Missouri on said map, as set out page 44 of the Record, taken from 31 Mo. Reports, 112, page 44; next, United States surveys of blocks 43, 44, and 45 of St. Louis, (pages 24 to 27, No. 148,) embracing defendant's lot, (page 45,) and Conway's and Loughbrough's maps of the city as United States surveyor-general; also, the concession of Louis Ride to the north half of block 44, (set out on pages 30 and 32 of No. 148,) which is bounded east by a road along the Mississippi. The confirmation to Ride by recorder Bates in 1816, saving the coms' right to River

street, (page 30 of No. 148,) and United States survey of Ride's confirmation, extending 160 feet on Lombard street, that being the entire depth east from Second street, (p. 33 of No. 148.)

Next, abstract of all the confirmations and concessions in the old town of St. Louis, (see page 36 of No. 148,) and also abstract of confirmations and concessions in blocks 41, 42, 43, 44, 45, and plats of the towns of St. Charles and New Madrid. Next, depositions of Boli and Sanguinet, (pp. 45, 46, No. 147,) to show that in Spanish times there was a public way between the front lots and the river. The defendant also read documents, as stated on page 48, including United States survey No. 394 of lot on block 44, being the north half of the Leveille lot, fronting 32 feet on Second street by depth eastwardly of 160 feet, the same as Louis Ride's adjoining survey, which is called for, and in specifying the interferences, it speaks of the confirmation by proof before recorder Hunt, under act of 1812, to Navalez, under Leveille, for part of square No. 44, of 30 feet front by 120 deep, bounded east by the river, having a *road between it and the lot*, (pp. 28, 29, No. 148.)

The defendants, in reply to this rebutting evidence, introduced the documents set out on page 49 of No. 147, and the depositions of witnesses (pages 49 and 50.)

The court gave for plaintiff instructions, on page 50, 51, declaring that the eastern boundary of the town was the main channel of the river, and that a permanent street established between the river and the most eastern blocks would cut off riparian rights from lot owners in the blocks.

For the defendant the court instructed that the possession by Mrs. Charleville before 20 December, 1803, and up to 13 June, 1812, of a lot in block 44, bounded west by Second street, east by the river, north by Leveille, and south by Lombard street, would give her title to the same with the accretions (pp. 53, 54.)

The court refused to instruct the jury for the plaintiff as to the effect of evidence, but left the case to the jury on their construction of it.

Thus the court refused instruction, No. 4, page 52, asking that the plat of the town as first laid out was evidence against the lot owners. Instructions 5, 6 on page 52 were also as to the effect of record evidence.

The court refused to instruct the jury that the confirmations and surveys by the United States of the title under which defendant claimed, were evidence of extent and boundaries of his lot.

The court refused to give any effect in law to the plan of the town made by Chouteau, and to the confirmations and surveys by the United States of the lot in question, fixing the extent and boundaries of the lot, and treated the case as one to be left exclusively to the opinion of the jury on the weight of the parol evidence against the documentary evidence. Even the plaintiff's record title the court refused to treat in any other light.—(See No. 2, p. 51.)

No. 148.

Defendant opens case, p. 16, by concession of 1 March, 1788, to Leveille, of lot 60 feet front by 150 feet deep, bounded on one side by lot of Louis Ride's heirs, on the other by the King's domain, on its rear by the Mississippi river, and on its principal front by Second street.

Defendant next examines witnesses (Hortez, p. 17; Pourcelli, p. 18; Barada, p. 19; Adams, p. 20) to prove possession prior to 20th December, 1803. They put the lot back close to the river, with *fence* east side and *passway* along the river. Only one of these witnesses speaks of the lot as it was prior to 20th December, 1803.

Defendant closes with this parol proof.

P. 22.—Plaintiff, in rebuttal, introduced witnesses (Chi. Sanguinet, p. 22; Wm. Boly, p. 23) who proved road about 15 feet wide along east of the lot.

P. 24.—Chouteau's map and other maps, as stated, (p. 24,)—the same evidence stated in No. 147, as to plats and surveys.

P. 28.—Confirmation and survey by United States to Leveille, 60 by 150 feet, "to be surveyed." (This is copied in No. 147, p. 24.)

P. 28.—*Survey* of *north half* of this Leveille lot, which *north half* is 30 by 120, and leaves a *road* between river and lot.

(*Note.*—This survey is of *Navalez* lot $\frac{1}{2}$.)

Pp. 30 and 32.—Concession of 15th April, 1799, to Louis Ride—80 by 120 feet—leaving a road on the bank of the Mississippi of 25 feet wide.

P. 31.—Bates' confirmation to L. Ride, leaving the vacancy between the lot and the river, and "order of survey."

P. 32.—Survey No. 393, for Louis Ride, 160 *feet deep.*

Pp. 34, 35.—Deed of Leveille's widow to Fontaign for north half the land "bounded east by *road*, which separates it from river."

Pp. 36–7.—Concessions of all blocks along river.

Defendant, in rebuttal, to prove how river front was, gave evidence.—(p. 38.)

It thus appears that the evidence in the two cases is nearly identical. But there is this difference: In No. 148, Schoenthaler's case, for the southern lot, the defendant gave in evidence the *concession* to Leveille of March 1, 1788, set out.—(p. 16.)

The defendant gave no other documentary evidence of title than this unconfirmed concession.

The residue of defendant's proof of title was the recollection of one witness testifying as to the possession of the lot prior to 20th December, 1803.

On this concession, in No. 148, the case is by the instructions made to turn.—(pp. 38, 39, 40, 41.)

The court refused all the instructions asked by plaintiff as to the effect of the plan of the town as shown by

the documentary evidence, and as to the effect of plaintiff's assignment, and instructed that the concession of 1788 was evidence of a claim under the act of 1812, and also of the extent of such claim, and then declared, as a proposition of law, that the lot possessed was according to the claim.

It will thus be seen that in Schoenthaler's case, No. 148, for the southern lot, the court virtually decided the case in favor of the defendant on the mere strength of the Spanish concession; while in No. 147, Risley's case, for the northern lot, the court left the jury to treat testimony of witnesses as of more effect than all the documentary proof offered by the plaintiff; and, indeed, allowed the record title of the plaintiffs to be overturned by oral testimony which did not conflict with it.

ARGUMENT.

The legal effect of plaintiff's evidence of title being the assignment to the Schools, is fully stated in the case of Kissell vs. The Schools, (18 Howard, 21,) and is argued at length in the printed brief in No. 27, The Schools vs. Walker. This court say: "We are of opinion that the certificate of the surveyor-general * * is record evidence of title," * * and it is not open to the courts "to inquire whether the lands set apart were or were not lots of the description referred to in the statutes. The parties interested have agreed that this land was a school lot, and here the matter must rest, unless some third person *can show a better title.*"

In Jones vs. Soulard, 24 How., 41, the school title was again sustained by this court; and also in very many cases by the Supreme Court of Missouri, (see case of Kissell vs. Schools, 16 Mo., 553, 582,) where the court say: "And where the party produces the designation to the Schools of a particular lot, * * he has shown a *legal title complete in form*, and it devolves on the opposing claimant to defend himself by showing a better title."

The plaintiff having thus shown a complete documentary title to land precisely marked out by a survey of the United States, was entitled to recover the land unless the defendant proved "a better title."

The defendant therefore had the burden of proof thrown upon him.

His title was under the same act of Congress that gave plaintiff title.

To the plaintiff was granted the public land by that act—the assignment proved this; to the defendant the lot was granted only in case it was a town lot on the 13th June, 1812, and as such had been occupied in the old Spanish town prior to 20th December, 1803. The act of 1812, therefore, gives no better title to town lots to individual owners than to school lots to the public, and it is as susceptible of proof on behalf of the Schools that the lot in question was public property, and therefore not a town lot, as against a private owner claiming it as a town lot, as the reverse of this would be. There is, therefore, no presumption against plaintiff's title in favor of the defendant's merely because defendant claims under the 1st section of the act. The real question in the case, therefore, is whether the property fell within the description of property given by the second section to the Schools, or the first section to individual owners.

The proof of title in defendant in Risley's case, No. 147, is as follows:

First, confirmation to Louis Ride by Bates, recorder of land titles in 1816, and United States survey of the same, (pp. 31, 33, in No. 148.) And also the title papers of the adjoining property on the south, calling for Ride as in same block.

The proof of title in Leveille, Schoenthaler case, No. 148, is also a confirmation, (p. 23, No. 147,) and United States survey of same, (p. 28, No. 148.)

Here is documentary evidence of title to both parcels of land lying within block 44 of the old Spanish town,

and Pourcelli, defendant's witness, says: "Block No. 44 was inside of the old town of St. Louis as it was in Spanish times. This block did not in Spanish times extend as far eastward as where Main street now is."—(p. 19, No. 147.)

The same witness testified for the defendant in No. 148, pp. 18, 19.

In the case of Schoenthaler, No. 148, the defendant claims title under the Spanish concession to Leveille.—(See instructions 3 and 4, p. 41.) The confirmation and survey of the Leveille title is set out, (p. 23, No. 147; p. 28, No. 148;) thus showing an actual location of the land claimed under the concession, as such claim is made in the case at bar—(No. 147.) And of this the case of Smith v. The City of St. Louis, 21 Mo., 36, says "where the confirmee of a Spanish concession accepts a survey calling for a street along the bank of the river in an incorporated town, *as a boundary*, he will not be entitled, as a riparian owner, to land subsequently formed by accretion, although his concession may have called for the river as a boundary."

These confirmations and surveys given in evidence by the plaintiff were the documentary evidence of title of the Spanish *town lots*, as the same had been proven up in the case of Risley as early as 1816, four years after the passage of the act of 1812, and only thirteen years after the change of government, and in the case of Leveille in 1825. They confined the lots to the ordinary depth of town lots in the old town, and are based upon the principle that a Spanish town lot given by the government for a village residence was in conformity with the general plan of the town. Such was the actual proof made at the early dates named, when both the government as well as the private owners could produce many witnesses of proper age to establish the true extent and of title.

The proof thus taken is evidence of a limit to the lots in question as town lots, and proper evidence of title.

The plaintiff having thus shown a complete documentary title to land precisely marked out by a survey of the United States, was entitled to recover the land unless the defendant proved "a better title."

The defendant therefore had the burden of proof thrown upon him.

His title was under the same act of Congress that gave plaintiff title.

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The proof thus taken is evidence of a limit to the lots in question as town lots, and proper evidence of title.

At that time there was no accretion, and no one thought that Congress in 1812 designed granting away the river front of the town under the description of a town lot.

What had been public property when the town plan of Chouteau was settled upon in 1764 for the common use of the town, descended to the public when the country was ceded in 1803; and even though in 1812 the land which embraced the lot in controversy was under water, yet, if by the plan of the town there was a margin of public ground in front of this block, and this block had by such plan an actual boundary on a line in common with the blocks further north, then such public plan must control the private property, and such public space is the actual limit of the blocks and the lots composing them.

If there ever was a vacant public space reserved for common use as a landing or street by the public plat in front of these lots, such as marked on Chouteau's map, the public title would not pass to private lot owners, even though the encroachments of the river might wear away that part of the soil above water. The river bottom within such lines would remain still subject to the same title. Now, Chouteau's map is an ancient document which establishes the line of this block 44 in the relative position that it occupied in 1764 with reference to the blocks north of it, and we thus can certainly fix the precise line of the front of block 44 as indicated on Chouteau's map and as it was in 1764. The blocks to the north, remaining as they were in 1764, and giving a uniform and permanent front line to the old town where they lie, thus serve to fix the precise position of such front line of block 44.

Now the block there in 1764 had a front line not touching the river, and there was this same public wharf that then and still exists to the north, extending along the entire front of the town—it was by Chouteau's map actual ground above the surface of the water. This was public property, established by a title paper of conclusive effect, if admissible at all.

The question, then, of controlling importance in this case is, whether Chouteau's map and the other documentary evidence was evidence of what was the plan of the town, showing the blocks, streets, and lines of public and private property.

This depends upon the construction of the act of 1812. This act required the United States surveyor "to survey the out-boundary lines of said towns so as to include the out lots, common field lots, and commons;" and he was directed to make out plats of the surveys and transmit the same to the Commissioner of the General Land Office and recorder of land titles; the expense "*of surveying the said out-boundary* lines shall be paid by the United States."

Sec. 2d says that all town lots "*included in such surveys*, which are not rightfully owned by private individuals, are reserved for the support of schools."

And an act supplementary to the above, passed 26 May, 1824, made it the duty of the surveyor-general "to survey, designate, and set apart to the said town so many of the vacant lots for the support of schools," (as were reserved in the act of 1812), and not exceeding one twentieth of the whole lands included in the *general survey of such town*, *according to the provisions* of the 2d section of the act of 1812.

This act is in all its provisions binding upon individual owners, and they must take their titles subject to the survey it calls for; what it reserved to the United States was and continued to be, public land, and the surveys it required became, when made, muniments of title.

Although the act is deficient in not providing for surveys to designate for individuals owners the lots granted to them, as stated in Guittard vs. Stoddard, 16 How., 494, 510, yet it does require surveys which shall show the boundaries of the towns, and with the act of 1824, surveys designating what portion of the public lands are granted to the Schools. These surveys, when made, are

conclusive evidence, under the acts of Congress, of what are public lands. The United States reserved the power to designate what it so granted to the Schools, and when designated the title passed. This is settled in Kissell vs. The Schools, 18 How., and there is nothing in the act to except the individual claimants under it from the proper legal effect of the survey.

Is the title given to individual owners by the first section of the act of 1812 any stronger because the law does not provide for a survey of such lots? Had a survey been provided for it would have been made by the surveyor general, and would not have embraced what he found to be public land. Such survey was provided for in the act of 1824 as to school lots and as to commons, which were also granted by the 1st section of the act of 1812.

It was held in Carondelet vs. St. Louis, 1 Black., 179, 188, that although the land was granted by the 1st section of the act of 1312, yet that "the power was reserved by Congress to the executive authority to survey this by including it in an out-boundary survey.

It was contended by Mr. Ewing, on page 185, that "on the passage of the act of 1812 the title of Carondelet was perfect to all the land which she possessed prior to 1803 by well defined and undisputed boundaries, and that title was not defeasible by any subsequent survey of a "federal officer," (and this principle is asserted in instruction 5, page 41, No. 148, given for Risley.)

But the court in the Carondelet case hold that the general scope of the act of 1812 amounts to a reservation of such power to designate by survey what was granted under the 1st section. This was as between two individuals claiming under that section. *A fortiori* should it be held that the express provision as to survey applicable to school lands gave the power to make a binding survey as to all grantees under that act. This was a part of the public land reserved, and the act is to be construed most favorably for the public interests, and especially is it to

have such construction as against individual owners under the act of 26th May, 1824, or of 1816, who proved up their lots, and thus gave power to the United States to survey the same. By construction of the act of 1812 given by defendant, a public survey of a reservation which the President might have chosen to make out of the public lands of St Louis would not prevail over verbal proof of title such as is offered here.

This is contrary to the whole current of decisions of this court respecting surveys of grants of land made under the laws providing for such grants.

West vs. Cochran, 16 How., 403.
Willot vs. Sandford, 19 How., 79.
Carondelet vs. St. Louis, 1 Black, 179.
Menard vs. Massey, 8 How., 313.

It is a misconstruction of the act to diminish the effect of the survey, which is provided for, as against other titles given in the same act. Had the plaintiff claimed under an older act of Congress his argument would have been perhaps stronger. The survey is conclusive against the government, but the defendant argues not against him.

A grant of title, that Congress reserved the power to locate by survey, and promises to so locate, is not available as a title, if the very same act be interpreted to mean that such location, when made, may, at any length of time, be overthrown by parol evidence.

Because defendant has no survey all other titles under the same act ought to be placed on the same loose footing.

This places plaintiff's title at the mercy of a single witness; for the act of Congress provides for no other evidence of title in plaintiff, and we see the effect of this construction of the law in practice when a jury decides in support of the views of the court below, against the survey, on the recollection of one single witness, Pourcelli, testifying in 1863 to what sixty years before he thought as to the description of the premises.

For the act of 1812 confirmed on possession *prior to* 20*th December*, 1803, and the only witness of plaintiff who spoke of events so far back was Pourcelli.

The possibility that a regular survey and assignment, of the validity and effect given to this by this court in Kissell's case, can be overthrown by the recollections of a child as to a matter that perhaps he had the slightest means of observing, and not become material until he was seventy-nine years of age, shows a construction of this act by the court below, contrary to good sense, to security of titles, and to the current of decisions of this court.

The surveyor-general, under the acts of 1812 and 1824 was charged with a duty that he then could readily and accurately perform, and this was to gather together all the archives and documents which had been before the boards of commissioners, and were recorded in the recorder of land titles' office, and determine where the different kinds of property were located. The Spanish concessions were open to him, Chouteau's map, and all that could furnish him with information; and also innumerable intelligent witnesses, including the large land owners, the proprietors of large tracts of land, the members of the boards of commissioners, who had investigated officially all these public facts. In the light of all these investigations was filed in the recorder's office Chouteau's plat, and no error in it has ever been pointed out.

It is from such material as all this that the assignment to the Schools is made up. On this material the surveyor-general was made a special judge, and it was for him to ascertain and decide what was public land and what not, and in Kissell vs. Schools, 18 Howard, 25, this court say: "We are of opinion that the certificate of the surveyor-general * is *record evidence of title*," &c.

Of what value is this record evidence of title, although the law required it to be given, if it can be overturned by the recollections of an ignorant child, detailed in old age, after a lapse of sixty years.

It could have been consistent only with the rulings of this court in other cases to have declared that this survey was authoritative and conclusive against another title under the same act, not sustained by a survey.

The surveyor-general could not have ascertained, from the records in his office, and those of the United States recorder of land titles, and other public archives, that this was public land without deciding that it was not private property. If it was not a lot prior to 20th December, 1803, it was public property. If it was not in any block, but was part of the public property shown by Chouteau's map, and other evidence which the surveyor was charged to examine, then it was not of the description of lots which individual owners were entitled to prove occupation of under the act of 1812. Was not this very fact submitted to the surveyor-general? This court says it was in Kissell's case, and he was, therefore, a competent judge, designated to enquire into the facts. The facts so enquired into by him the court in Missouri has gone into, in 1863, on the best evidence which then could be procured. Its conclusion depended upon the uncertain verdict of a jury, based on slender testimony, which it elevated in the scale of evidence above the decision of the surveyor-general and the other record evidence. Its mistake was not to give the proper effect to the evidence of title offered by plaintiff.

There is, in the public archives, in the recorder's office and surveyor-general's office, in St. Louis, and in the land office here, full evidence of the establishment of St. Louis as a Spanish town, with streets and blocks, public places, and lots used for cultivation, called common field lots, and town lots, and barn lots. There were public authorities, who regulated streets, commons, bridges, and all general matters.—(See this, copied in Mackay vs. Dillon, 4 How., 430, entitled "Proceedings of Syndics," who had been "named as such by the meeting of inhabitants, holden in the government chamber, on 22d September,

1782;" see also the following from the case of Strother vs. Lucas, 12 Pet., 412):

"By the evidence it appears that in 1764 the post of St. Louis, in Upper Louisiana, was first established by the French, under Mr. Lacleide. In May, 1770, the Spaniards, under the treaty of 1764, took possession of St. Louis and upper Louisiana. Between the years 1764 and 1772 divers grants of land in upper Louisiana were made by the French and Spanish authorities respectively. Amongst those grants were some forty or fifty, containing each from one arpent by forty, to four arpents by forty, located in the prairie immediately west of the then village of St. Louis, and extending some distance north and south of it. These lots extend westward to the uniform depth of forty arpents, being parallelograms whose opposite sides are on the north and south forty arpents in length, and on the east and west from one arpent to four arpents.

"Some time in the year 1772 a survey was made, as above described, of these lots, by Martin Duralde, the authorized surveyor of the post of St. Louis.

"About that time a fence was established on the eastern boundary of the above range of lots, which separated them from the village and what was called the commons; there was no division fence, nor any fence on the western boundary; the lots were contiguous to each other; but each lot was held separately, and cultivated separately, by its proprietor or occupant, who was bound, by the regulations of the post, to keep the fence in front of his lot (or of whatever number of lots he occupied) in good repair."

These records show that the town plan was clearly and authoritatively defined, and different kinds of property designated by visible, notorious, and permanent monuments. Possessions were taken and held only in conformity with these public regulations, which had the force of law, and were invariably and universally obeyed.

The plan of the town established by Chouteau's map, and which is stated as authoritative by the Supreme Court of Missouri in 31 Mo. Rep. Smith vs. The City excludes any individual owner from the river, and thus cuts off

private riparian rights.—(See 21 Mo., 36; 30 Mo., 304, 399.)

The defendants, to avoid this result, attempt to prove another plan of the town by showing that the street along the rear of their lots shifted east and west as the river receded or encroached.

But the little passage-way spoken of by the witnesses was not the public space marked on Chouteau's map.

The court below made the decisive question of fact the nature of this little passway as it was within the knowledge of the witnesses. But this was turning attention to a small and almost immaterial matter, and excluding the public space shown by Chouteau's map, which established the character of the land, from the jury.

The act of 1812 is an American title paper. It rejects concessions, and treats of public and private property in the same act, and disposes of both.

Under this act the defendant seeks to set up the Spanish concession to Leveille as a controlling evidence of title, and the court so instructed in No. 148, p. 41, instructions 3 and 4. This is contrary to the law as declared in the following cases.—(Page vs. Scheibel, 11 Mo., 167, 186.)

"Now, this act of Congress confirmed village lots solely on the ground of inhabitation. * * Concessions were not alluded to in the act, and had *nothing to do* with the foundation of the claims. * * The thing confirmed was *not the concession.* * * The controlling feature * is *inhabitation.*"

Guittard vs. Stoddard, 16 How., 494, 570, says "the act of 1812 makes no requisition for a *concession,*" &c. * * "*Congress in this act was* not dealing with *written* evidences of right. *Such* claims in Missouri have been provided for by other acts. These village lots proved a residuum, &c. *Congress afforded no* means of authenticating the rights," &c., cites the early Missouri cases and Page vs. Scheibel.

The instructions given here are identical in effect with

the instruction given in McKay vs. Dillon, 4 How., 448, thus: "The following instruction was asked for and given on part of the defendant: That the *claim* of the inhabitants of the town of St. Louis to commons, as exhibited in the copy of the claim given in evidence, was confirmed by the act of Congress." * *

It *assumes, as a matter of law*, that the act of 1812 adopted KcKay's survey and the evidence given in its support; that they are part of the grant, as to its *extent* and legal effect, &c. (It was *part of the claim.*) See same case of McKay vs. Dillon, 7 Mo. R., 15, where the court held that the *claim* was confirmed, and which was reversed by this court on that ground in Mackay vs. Dillon, 4 How., 448.

The court below also refused all instructions which declared that the United States confirmations and surveys were the best evidence of location.

The plaintiff relied upon documentary evidence to prove the existence of streets and other public grounds, and asked the court to declare thereon, as a matter of law, that such evidence was conclusive that the ground was public, and cut off private claimants from encroachment thereon. No proof that a person having a lot next to such public grounds, used such public ground could make out a title, under the act of 1812, to any part of the public property. Under the former government there was no private occupancy of such public places, and the act of 1812 did not intend extending possessions of individuals to public lands.

Smith vs. The Schools, 30 Mo., 304, 399; Smith vs. The City, 21 Mo., 36, are authorities in favor of the plaintiff.

In Schoenthaler's case there was absolutely no proof of any confirmation under the act of 1812, except that given by plaintiff in rebuttal, being the documentary evidence. The defendant did not profess to take under the confirmation of which he gave proof by verbal testimony, for

his proof was to establish an out-standing title in some unknown third person. Now it was of the essence of such title by the act of 1812 that there should have been a right and claim, as well as possession.

In Barada vs. Blumenthal, 20 Mo., 162, the case turned on the existence of the claim to the lot in 1812, and the court supported an instruction declaring, notwithstanding proof of possession, if there was evidence to show an abandonment of the claim, it would defeat the title. See also Page vs. Scheibel, 11 Mo., 167, 182, to same effect.

If abandonment of a lot is evidence which deprives possession of all effect under the act of 1812, is not proof of extent and boundaries under the act of 1824, and an actual survey, conclusive evidence of location, and therefore final here on the fact that the private lot did not embrace the land reserved for the Schools.

It has been held repeatedly that surveys by the United States are evidence of the location of lots confirmed under the first section of the act of 1812.

In Soulard vs. Allen, 18 Mo., 590, there was a confirmation under the act of 1812, evidenced by proof before Hunt, recorder under the act of 1824, and a United States survey of same. It was objected that the survey was not evidence of the land confirmed.

The court say: "*The survey annexes itself to the confirmation*, and prima facie shows the land granted. * * The survey is evidence of the locality of the land confirmed by the act of 1812."

McGill vs. Somers, 15 Mo., 80, 87, says.

"Several of the instructions given involve the question, how far the surveys made under the authority of the United States are evidence of the true location of the claims surveyed. The government has provided, from the time of its first action upon land claims in Missouri, for surveys to be made by its own officers, and by the 1st section of the act of 29 April, 1816, providing for the appointment of a surveyor in Illinois and Missouri, *it is made his duty* to cause to be surveyed all lands, the claims

to which have been, or may be hereafter, confirmed by any act of Congress."—(3 Statutes, 325.)

"Surveys of these claims are alike necessary to the claimants and the government. To the claimants, in order that they may have the boundaries of their land defined, and to the government, that the lands may be ascertained, which are subject to disposition under its laws. The acts of Congress thus imposing the duty upon the officer, acknowledge the right of every person to have his land surveyed. When the survey is made and passes through the examination and receives the sanction contemplated by law, it is conclusive upon the government. It is, in like manner, conclusive upon all persons who claim title to the land under titles originating subsequent to the survey, and it is, of course, conclusive upon all mere intruders and strangers without title to the land. It is prima facie evidence of locality against all persons who claim under an opposing title, for to make it less would be to deny to the claimant the right to have his land designated and set off to him, which the laws have always conferred. If there is a conflict with another title, it must be with a claim having its locality ascertained by another survey, and when two surveys thus conflict, the *question of the proper locality of each* is to be determined by evidence running back through the whole history of both claims. If it appears, when all the evidence is presented, that the two titles, when properly located, cover the whole or part of the same land, then the right will be determined as a question of law in favor of the party whose title by its character and age is the superior title."

The survey here was one of a confirmation under the act of 1812. This decision was in 1851.

It was decided by the Supreme Court of Missouri, after the most elaborate argument, that the title to the commons of St. Louis and Carondelet, because confirmed by the first section of the act of 1812, could not be affected or designated by any subsequent survey thereof; that the title having passed from the United States, the location and extent was a matter to be determined by a jury.

This was first held in Carondelet vs. McPherson, (20 Mo., 192, 201, 1854,) where Carondelet was allowed to

prove title without a survey. The next case was City of Carondelet vs. City of St. Louis, (25 Mo., 448, 1857,) where the survey of St. Louis commons was held not conclusive against the Carondelet commons title supported by no survey, and on mere proof of occupancy and user, under the 1st section of the act of 1812. The court say (pp. 459–60): "The act was a complete divestiture of all the title of the United States, and, nothing being reserved by the government, nothing was required to be done by the confirmee."

The case was up again in City of Carondelet vs. St. Louis, (29 Mo., 527,) and the law, as previously settled in the two former decisions, was not doubted. This last case was brought to this court, and is reported in 1 Black, 179, 185. The principle was at once relied upon that the act of 1812 passed title, and therefore the executive department could make no survey.—(See Mr. Ewing's argument, p. 185.) But the court held, first, "Where suit is brought in a state court by a town, claiming part of its commons, under the act of 1812, and the defence is that there was a survey in pursuance of the federal statute which estops the plaintiff to set up his claim, this court has jurisdiction." Second, "The true construction of the act of 1812 is that it granted to the inhabitants of the towns therein named their lands used in common for pasturage, but reserved the authority to define the limits of those common lands by a survey."

This reservation of power to survey was no more explicit and in no other terms as to commons than as to the town lots, for the same first section regulates both. But all the sections of the law apply to all the subjects of it. The first section directs a survey, and express mention of the survey of the commons is found in the second section of the act of 1824, which also provides for survey of the school lots.

But the court saw, from the numerous and interminable suits which sprang up under the Missouri construction

of the act of 1812, and the supplementary acts thereto, which made those confirmations exceptional ones as to the power of the government to locate and designate the lands those acts disposed of, that endless confusion would arise. It became necessary to put a stop to such consequences for the court to decide, that it did not find, in the first section of the act of 13 June, 1812, any intention on the part of the government to abandon its established practice of designating lots granted by its own executive officers. To construe the act of 1812 otherwise, is to break up the regularity of the land system within the jurisdiction embraced by the act, and to impute a design to Congress at variance with all rules existing prior and subsequent to that act. And there is nothing in the act requiring such construction for the protection or completion of the rights it confers. As soon as it was declared, in the case of Carondelet vs. McPherson, in 1854, that the United States had no power under the 1st section of the act of 1812, to survey the commons it granted, the people of St. Louis and Carondelet became at once involved in litigation about titles claimed to be in both commons, and the foundation of these innumerable suits was this same error of construction of the act of 1812; and it is a matter of public history, within the knowledge of the authors of this brief, that, when the decision in the City of Carondelet vs. The City of St. Louis was rendered, in 1 Black, 179, in 1861, that a large number of suits to evict possessions within the St. Louis commons were pending, brought on the loose principle decided in McPherson vs. Carondelet, and were, by the reversal of that principle by this court, in Carondelet vs. St. Louis, 1 Black, 179, forever settled. The simple point which settled so much litigation, and gave so much relief to those who, for years had, without suspicion of infirmity of title, held, under the St. Louis survey, made in 1832, was, that Congress had not, in the act of 1812, given up the power to define and locate by survey the lands embraced in the first section.

Schoenthaler, not claiming title, and setting up the only defence of an outstanding title, in Leveille's representatives, cannot question the correctness of the survey of the Leveille lot. This was expressly decided in Boyce vs. Papin, 11 Mo., 16, 25. The court say, in answer to an objection, that the survey was no evidence of location of a lot confirmed on grounds of possession, "that the ascertainment of Chouteau's possession is expressly referred to the surveyor-general by the act of 1824, and when the evidence is taken, and the surveyor is satisfied, a stranger, who shows no title in himself or in another, should not be permitted to question its correctness. * * * To ascertain the locality of a barn lot in 1842, depending on a possession prior to 1804, where, perhaps, a barn has not stood for thirty or forty years, is a matter depending upon the fleeting memory of witnesses. * * The agent of the United States has located the lot to the satisfaction of the claimant. Why should a stranger be permitted to question its propriety? * * * But it has been suggested in argument that there is an outstanding title to all the vacant lots in St. Louis in the Public Schools."—(1847.)

And Risley is equally bound by the United States survey, on the principle stated in Menard vs. Massey, 8 How., 293, 313.

Riparian Rights.

Congress never, since the act of 1812, has passed any act concerning lands within the out-boundaries of the town of St. Louis, excepting the acts of 1824 and 1831, to complete the title to the reserved lots; thus showing that Congress considered that this act disposed of everything within those boundaries.

The *reservation* in second section of the act of 1812 is as complete a bar to the accrual of any adverse title as a direct grant of title would be, on the principle settled in Wilson vs. Jackson, 13 Pet., 498.

The act of 1812 operates on the possession prior to December, 1803. Testimony to prove such possession, with a view to the establishment of title under the act, should have been restricted to that date. It was a misconstruction of the act to admit testimony referring to a later date to establish riparian rights in the defendants.

The proof of occupation, &c., prior to 1803, which the record contains, did not authorize the court to submit the question to the jury. The only witnesses—Pourcelli and Sanguinet—who speak of the possession as of that date, prove that a public road intervened between the enclosures and the river, and prove no fact which authorizes a jury to find that the occupants of the lots were riparian owners.

The question in these cases is essentially the same as decided in the cases of Smith vs. St. Louis, 21 Mo., p. 36; 30 Mo., p. 290.

The property in question there is shown in figure 2, Conway's map, and lies one square above the block here in dispute, and in front of block 42. Smith claimed, as riparian owner, in virtue of his ownership in block 42.

The grant under which he claimed the alluvion called for the river, and for a street on the river front. In the first case the court decided against him on the ground that the survey of the confirmation controlled, citing Menard vs. Massey, 8 Howard, p. 303. The court add, 21 Mo., p. 40: "There is no doubt that many concessions of lots in St. Louis were granted under the Spanish government with boundaries fronting on the river. August Chouteau, in 1825, filed, among the archives of the city of St. Louis, a plat of the said city as it was designed by him *as its founder*. He did not pretend, however, that the plan was made in virtue of any public authority. This plat shows that there was a vacant space left between the river bank and the lots fronting on Main street on the west. In June, 1810, the first board of commissioners for adjusting land titles in Missouri, while acting on a

claim of Julian Papin Benito, which was for a lot back to the river from another lot adjoining Main street, says: 'it is the opinion of the board that this claim ought not to be confirmed. This space has been termed the bank of the Mississippi. The lots between Main street and the Mississippi being one hundred and fifty feet only, as appears by the plat of the town of St. Louis, recorded by Pierre Chouteau and others in behalf of the inhabitants of said town, as also in all the old concessions given for said lots; and it appears from said plat that a nearly similar space of ground exists between the Mississippi and all the other lots that are situated between the Mississippi and Main street.'" * * "The case of Mullanphy's Ex's vs. Daggett and Price, 4 Mo., p. 343, does not affect the matter under consideration. That was an action of *quare clausam fregit* for injuries done on the Yosti concession, which, though bounded east on the river, was situated *north of the old Spanish town.*" [For the same reason the case of Lebeaume vs. Gaven, 37 Mo., 556, does not apply, that lot being south of the town shown by Chouteau's map. Another reason, however, is, that the question of riparian rights was not raised by this case.] "The case mainly relied on by the plaintiff is that of Morgan vs. Livingston, 1 Cond. La. Reps., 451." The court holds this inapplicable to lands in Missouri. The court decides this case on the survey, but adds, p. 42: "In coming to this conclusion we do not wish to be understood as intimating the opinion that the plaintiff's eastern boundary was not properly located. We do not go into an examination of that question, nor do we wish to be understood as expressing any opinion in relation to the rights of riparian owners of lots in the city of St. Louis, *nor as intimating that the town of St. Louis, in regard to riparian proprietors, stood on no other ground than a private* [*rural*] *grant, bounded by a water-course, under the Spanish government.*"

In the second case, 30 Mo., p. 290, to obviate the effect

of the survey, the plaintiff relied on parol proof under the act of 1812. Defendant introduced the plaintiff's confirmations and survey. Plaintiff insisted, p. 297, that the survey for him, introduced by defendant, could not limit his right or deprive him of the accretions. The court held that such a grant, if of rural lands, would be riparian, but being of a town lot, limited by the street, it was not riparian, though *calling for the river also*. The argument of plaintiff, p. 297, was, that St. Louis was not an authorized town under the Spanish government; that New Orleans was the only legally established town, and that, therefore, grants in St. Louis, calling for the river, were rural and riparian. But the court held, p. 307, quoting Judge Martin, that the rule, even in New Orleans, does not rest on the fact that the town was an authoritatively established town, but on the fact that the existence of streets, according to the plan of the town, made the lots *agri limitati*, and not being subject to the burdens, the owners are not entitled to the privileges of riparian property. The question is, whether the land had *fixed* limits, as by a street, or one variable with the water-course, and this, he shows, p. 308, is the essential difference, as a boundary, between a rural road on the river bank and a street in a town, *the one being fixed by the plan of the town and the other shifting with the river*. Lots in a town, which were limited by the plan of the town, by streets and public places, were *agri limitati*. Town lots, like rural lands, might be bounded by a river, and if so, were *agri arcifinies*. "But the question is," says the court, p. 301, "whether a lot, which is bounded or limited by streets, can, with any propriety, be said to be bounded by a river. Is it not *agri limitatus*, within the definition of that term, as understood by the civilians." And this is the question in this case. Proof was there given, as in these cases, to show that, till a recent period, the actual boundary of the lot was the river.—(pp. 292–3.) Paul's map and other evidence was offered to show that there was no street in

front of block 42, and that Main street did not extend to that block. The court held all this, and the testimony about a "*little passway*," to be immaterial, the fact being established that the street existed, *though submerged*, the street was the boundary.

The existence of the street or public place in front of block 44 is equally as well established in these cases as it was in that. The only difference between Smith's and these cases is one that should obviate all difficulty. It created the questions in the Smith cases. Here there is *no call for the river in the grant.* In the Smith cases the Recorder's confirmations called for "Front street or the Mississippi river, leaving a road between it and the river," (p. 291,) and the concession confirmed by the old board was of a lot "*du côté du Mississippi et y faisant face*," equivalent to fronting on the Mississippi, and equivalent to the words in Poeyfare's deed, "*face au fleuve*," p. 305, which, by the decision in Morgan vs. Livingston, 6 Martin, carried riparian rights. Here we are not embarrassed by any call for the river. The grant is only for a town lot which had been inhabited, &c., to which the proposition of McEllery, in reference to New Orleans, quoted by the court, p. 305, applies. "*Its lots are all bounded by streets, and are sold, whether so expressed or not, according to its plan.*" With equal reason lots in St. Louis granted by Congress, whether so expressed or not, should be held to be, "according to *its* plan."

It is not pretended that the occupation proved extended beyond block 44. Pourcelli, the only witness for defendants, who testifies as to the occupation of the lot prior to 1803, testifies (p. 19) that the lot was then about 300 feet deep, and there was, "in Spanish times," he says, between the enclosure and the river, "a passage-way of about 10 feet wide. The public had the right to pass there the same as the people have to pass on a street or alley." Sanguinet, a witness for defendants, testifiies that there was, in Spanish times, a road between the lots and

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the river which extended the whole length of the town, and was about 15 or 16 feet wide in front of Mad. Charleville and Leveille. "The people used said road as other public streets in St. Louis." Pourcelli says, when he was about 18 years of age, which would be about the year 1802, still Spanish times, the fence had to be removed west because the road had fallen in. This made the river the actual boundary of the block in his view, and it is in this sense he is to be understood when he says "in Spanish times the river was the eastern boundary of block 44." It was the boundary in his view, because the river had washed away the street in front. He was an illiterate man, unable to sign his name, not qualified to decide, and not undertaking to decide, the question now before the court as to what was the legal boundary of the block. His statement that the river was the boundary can only be taken as another form of repeating the facts elsewhere stated by him, that the river had washed away the street "in Spanish times." But the washing away of the road or street, and the invasion of the enclosure, which are the facts to which he testified, do not make a *prima facie* case of river boundary in contemplation of law. The road or street washed away was, he says, a road used just as any other public street or alley. This fact puts the street on the east on the same footing as a boundary with Second street, which bounds the block on the west. There was never, after the street, which the witnesses call a "public street or road," was washed away, any street or road on the bank in front of the lots till the city projected the cross-streets above and below the block, beginning in 1844, and filled in and reconstructed Main street. This fact is clearly proved by defendants' witnesses, and is uncontroverted. Hortiz, page 20, says: "The first I knew particularly of block 44 was in 1808. Leveille and Tayon's lot ran *to the river;* was never any street between the east of these lots and the bank of the river. The ends of the fences

would have sometimes to be moved back on account of the abrasion or falling in of the bank." On cross-examination he said: "There was no passing east of block 44; was no public road there. * * * The ground between the bank and Duncan's Island never began to fill up until the cross-streets were projected into the river."

David Adams, p. 21, says: "I can remember as far back as 1806 or 1807. * * The fence on Tayon's lot ran back of the river [*back to the river*] when I first knew it. He had to move the fence back. When he did so he left a space or passway for *his own convenience;* * * never was a road to my knowledge between the block and the bank of the river from Plum to Cedar streets." Dowling, p. 43, says: "Have known block 44 since 1817; * * * never knew of any street along there."

William H. Cozzens, another witness for defendants, proves (p. 26) that Rene Paul's map was made in 1823. This map, put in evidence by defendant, p. 25, shows that the street and much of the block was then under water, and that there was no road or street on the bank in front of the block. *Still the map bounds the block, not by the river, but by the street, and shows the fixed location of the street as it existed from the beginning unchanged, though under the water, in* 1823.

There is no warrant, therefore, on defendants' own evidence, taken in the sense most favorable to them, for the assumption by the court, in the first instruction given for defendants, p. 53, of No. 147, and the 2d, of No. 148, p. 40, that the block was bounded by the river.

There is no conflict between that testimony and that of plaintiff, showing the existence of a public street in front of this and other blocks in the old town by Chouteau's map; by Smith's cases, 21 and 30 Mo.; by the confirmations and surveys of Latresse, Blondeau, Hortiz, Ride, and Leveille; by the calls of ancient deeds, as in that of Blondeau to Lecompte, dated January 7, 1772, and

in that of Cerré to Callou, dated June, 1800; by the partition deed of 1825, of the Charleville lot, between Francis Tayon and Arthur Park, and Pelagie, his wife, known as Mad. Charleville; by the deed from Park to Rocheblave, from Tayon to Papin, and from Papin to Stearns and Risley, the defendant. The two last were introduced by defendants themselves, after the close of plaintiff's case in rebuttal, because it was found necessary then to connect themselves with the outstanding title in Mad. Charleville's representatives, which defendants did not intend to do in the outset. These deeds bounded the defendants by a street, if there be one, and estop the defendants from setting up a claim for the river boundary. But the court below not only assumed, in the instructions given for defendants, that there was proof to establish riparian rights, but refused to say that the existence of the street, which even the deeds to defendants recognized as the boundary of their lot, repelled the presumption of riparian rights.

Instructions 4 and 5, of plaintiff's instructions refused, p. 52, declare that, if the jury believed from the evidence, that, according to the plan of the former town of St. Louis, there was a space of ground left for a street, or otherwise dedicated to public use, between the lots and the river, the lots were not riparian.

The instructions for defendants, Nos. 1 and 2, pp. 54 and 55, of No. 147, and p. 40, of 148, declare that, if prior to, and on the 20th December, 1803, a lot of ground bounded east by Mississippi was inhabited, &c., the accretions thereto belong to those holding under such occupants, and that the existence of a public passway along the river did not affect this right if such passway was kept up at the charge of the occupants, and advanced or receded with the river. There was no evidence which authorized either of these instructions for defendants. The first, as to boundary, has been considered above. That as to the passway was also wholly unwarranted by

the testimony. There is not a syllable to prove either that the road was kept up at the charge of the occupants or that it shifted with the river. Sanguinet alone is questioned on the subject. On his cross-examination, p. 47, he says: "I do not know that the city or town ever expended any money repairing the road along the river; *the people kept it in order;* the first bridge across Mill creek was built by the inhabitants," &c. On re-cross-examination, p. 48, he says: "The road along the river was repaired by the *voluntary* act of the people living along the road, and not by public authority, or public taxes; *passengers and people* living along the road repaired it." After the public road fell in about 1802, as testified to by Pourcelli, there was, as we have seen, no public road at all in front of the block.—(See testimony of Hortiz, p. 20; of Adams, 22; of Dowling, p. 44.)

These are defendants' witnesses, and they are the only witnesses who testify on the point. The instructions, nevertheless, assumed that the evidence tended to prove a case similar to that of Morgan vs. Livingston, cited 30 Mo., 305, where it was said that, as the *law* imposed upon the proprietor the *burden* of repairing the road and supplying the ground for another, if it were carried away, it gave him the alluvion to compensate for the risk. Here the evidence fails to show either that the proprietors of block 44 repaired the road while it was above water, or furnished ground for another when it was submerged.

But the testimony introduced by defendants themselves establishes the reverse of this hypothesis conclusively. Their witnesses show that there was no road supplied elsewhere by the occupants of block 44 after that spoken of by Pourcelli and Sanguinet as a public road or street was submerged, and Paul's map traces this street at its proper site under the water, and extends the block to it, showing "that the lots had fixed and immovable limits," not affected by the water-course. It was by the city authorities, and at the expense of the city, that the

street was restored to use, and all the land in question reclaimed. This consideration had great weight in giving the *quai* to New Orleans.—(See 10 Peters, 717.) The right should be clear that takes from a community a property rendered valuable by public expenditure.

The court refused to declare, as requested by Nos. 6 and 7, refused instructions, p. 52, that the plan of the town was better evidence than oral testimony, as to the extent of the lots, and also that, as matter of law, defendants were not entitled to riparian rights. Chouteau's map has always been recognized as proper evidence of the plan of the town, not only by the courts of Missouri, but by the old board of United States Commissioners to settle land claims in that state.

The act of 1812 originated with that board, and was adopted to carry into effect its views, which were communicated to Congress by its reports, and through the letters of one of its members, Mr. Penrose, and its secretary, Mr. Riddick.—(Gales & Seaton's State Papers, Public Lands, vol. 2, pp. 448, 451.) And the Supreme Court of Missouri and this court have construed the act accordingly.—(Trotter vs. Public Schools, 9 Mo., 69; Kissell's case, 16 Mo., 184, *supra;* Guitard vs. Stoddard, *supra.*) In this way the courts have reached the accepted construction of the second section of the act as to the lands reserved for schools.

But the board was yet more explicit in *excluding* any *private lots* from the places shown on Chouteau's map as public than *in including* all vacant lands in the grant to the Schools.

The rejection of Benito's claim in 1810 is an express decision that the public places indicated in Chouteau's map could not be rightfully claimed by private persons. This decision would be presumed to be known to Congress, and enter into the construction of the act of 1812, even if the actual knowledge of the map by the authors of the law was not historically established. But when

the courts have treated the board as in fact the authors of the law, its decisions which explain, and fix its meaning become a part of it. Chouteau's map is therefore authoritative to exclude the private lots from the public places indicated on it. A similar map saved the *quai* at New Orleans.—(10 Peters, 662.)

The map of the old town of St. Louis is equally as authoritative as the map of the former town of New Orleans. The Supreme Court of Missouri say, 31 Mo., p. 113, "Chouteau's conduct, and that of his colleagues, in laying off the town was sanctioned and adopted by the Spanish government." It was accepted as authoritative, as we have seen, by the earliest and best informed of the authorities of the United States, the board which shaped the legislation of Congress now under consideration.

The Supreme Court of Missouri affirmed both these cases on the ground that they involved only a question of fact, which had been submitted to the jury. This is a total misconception of the cases. There is no controversy with respect to any fact. The only questions are as to conclusions of law upon undisputed facts, established by documentary and oral proof. The cases depended altogether upon the proper construction, or legal effect of the testimony which the court was asked to determine, in the series of instructions refused, pp. 51, 52, and 53.

The first instruction given for defendant said that if Madame Charleville, prior to 20th December, 1803, possessed a lot, part of present block 44, bounded east by the river, and claimed title to it, and that river accretions have been made to said lot, embracing the premises in dispute, the jury must find for the defendant.

This instruction overlooks the consideration that it was proper for the court to declare that the plan of the town of St. Louis was evidence of the limits of the lot. It is a matter of law, which the jury may or may not know, that the rightful occupancy of a lot as private property could not apply to public ground; and it is also a matter

of law that a public map or plan of the town, and documentary evidence, consisting in the archives of the government, which are the proof of authoritative public proceedings, are binding upon the entire state, including all the individuals thereof.

The position of the plaintiff is, that there could have been no "*rightful claim*" to the public space on Chouteau's map, in front of this block; and that even if there was proof of its occupation, (which there is not,) such occupation would have given no title, and a *fortiori* there could be no title, founded on possession to the water's edge, after the submersion of this public street or space.

The second section of the act of 1812 says "that all town or village lots included in such surveys, which *are not rightfully* owned or claimed by any private individuals, are hereby reserved for the support of schools;" and the first section says "that the rights, titles, and claims to town or village lots, * which have been inhabited, cultivated, or possessed prior to 20th December, 1803, are hereby confirmed, *according to their rights thereto.*"

The word right or rightful is not found in said instruction, and it was clearly leaving a matter of law to the jury to permit the jury to extend the boundary of the lot by mere verbal proof of possession, to the river, against positive and conclusive evidence of another character, of the true boundary of the lot.

The jury were further misled by the second instruction given, p. 54, (No. 147,) which directed their minds to the shifting passage-way along the shore, on the top of the bank, as one of the features of the case.

Under these instructions, Nos. 1 and 2, given for defendant, if on the 20th December, 1803, or at the time testified to by the witnesses, the possession of the defendant reached the water's edge, no matter how shortened the lots may have become by the washing away of the bank, that could have given the defendant title to all subsequent accretion. On this theory, if the river had

washed away block 44, and Second street west of it, so as to touch the eastern edge of the lots fronting on the west side of Second street, and afterwards receded, the title of block 44 would have passed to the owners of the property west of Second street. Chouteau's map, Conway's map, and Paul's map, and the assignment to the Schools are all evidence proving that, under the Spanish government, block 44 could not and did not reach the river.

The *viva voce* testimony of old witnesses proved nothing contradictory of these maps and records, but only the fact within their recollection, which was nearly, if not altogether, after 1803, that the land above water did not reach as far east as the east line of block 44.

If, therefore, the jury believed the testimony of these witnesses, they would find for the defendant notwithstanding they might believe that, far east of the water line, on the plan was first established for the town, there was a public wharf reserved permanently for public use. There was a direct and irreconcilable contradiction between the instructions given for plaintiff and defendant. Instruction No. 7, declaring on the proof, as a matter of law, that the lots did not rightfully extend across this public wharf, under the act of 1812, which was refused, ought to have been given.—(page 52.)

The old deeds in evidence call for a street along the east line of the blocks, and the evidence of witnesses shows that prior to 1803 the east edge of the land was where the river afterwards ran. These and all the documentary evidence show that Chouteau's map was a correct designation of the Spanish town as actually established. There is nothing in conflict with these old deeds, and map of public survey, save only the call in the concession to Leveille, which was not confirmed, and was not evidence of the extent of the confirmation by the act of 1812, and was objected to, and improperly admitted in evidence.

SUMMARY.

(1) Assignments to the Schools by the Land Department conclusive against individuals claiming on oral testimony under acts of 1812 and supplementary acts—the common source of title.

(2) Concessions not confirmed by act of 1812, and not competent evidence to establish the location or extent of the lands granted, or any of the conditions of the grant.

(3) Public surveys of confirmations binding on the confirmee,—a proposition which applies to claims proved before recorder, under acts of 1812 and 1824.

(4) No proof in the record tending to establish riparian rights in defendants, or which authorized the submission of the question to a jury.

(5) Such rights could not be established within the old town of St. Louis shown by Chouteau's map, by oral proof, against the plan of the town recognized by the Spanish and American authorities.

(6) The instructions of the circuit court were contradictory, and submitted questions of law to the jury.

M. BLAIR,
F. A. DICK,
For Plaintiffs in Error.

APPENDIX.

Act of 13 *June*, 1812.

The act of Congress of 13th June, 1812, is in words and figures as follows:

Sect. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons, in, adjoining, and belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa à Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Arkansas, in the territory of Missouri, which lots have been inhabited, cultivated, or possessed, prior to the 20th day of December, 1803, shall be, and the same are hereby, confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto: *Provided*, That nothing herein contained shall be construed to affect the rights of any persons claiming the same lands, or any part thereof, whose claims have been confirmed by the board of commissioners for adjusting and settling claims to land in said territory. And it shall be the duty of the principal deputy surveyor of the said territory, as soon as may be, to survey, or cause to be surveyed and marked, (where the same has not already been done according to law,) the out-boundary lines of the said several towns or villages, so as to include the out-lots, common-field lots, and commons thereto respectively belonging. And he shall make out plats of the surveys, which he shall transmit to the surveyor general, who shall forward copies of the said plats to the Commissioner of the General Land Office, and to the recorder of land titles; the expense of surveying the said out-boundary lines shall be paid by the United States out of any moneys appropriated for surveying the public lands: *Provided*, That the whole expense shall not exceed three dollars for every mile that shall be actually surveyed and marked.

Sect. 2. *And be it further enacted*, That all town or village lots, out-lots, or common-field lots, included in such surveys, which are not rightfully owned or claimed by any private individuals, or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes, shall be, and the same are hereby, reserved for the support of schools in the respective towns or villages aforesaid: *Provided*, That the whole quantity

of land contained in the lots reserved for the support of schools in any one town or village shall not exceed one-twentieth part of the whole lands included in the general survey of such town or village.

Sect. 3. *And be it further enacted*, That every claim to a donation of lands in the said territory, in virtue of settlement and cultivation, which is embraced by the report of the commissioners, transmitted to the Secretary of the Treasury, and which, by the said report, shall appear not to have been confirmed, merely because permission by the proper Spanish officer to settle has not been duly proven; or because the tract claimed, although inhabited, was not cultivated on the twentieth of December, one thousand eight hundred and three, or not to have been confirmed on account of both said causes; the same shall be confirmed, in case it shall appear that the tract so claimed was inhabited by the claimant, or some one for his use prior to the 20th day of December, 1803, as aforesaid, and cultivated in eight months thereafter; subject, however, to every other limitation and restriction prescribed by former laws in respect to such claims; and in all cases where it shall appear by said report, or other records of the board, that claims to land have not been confirmed merely on the ground that the claim was for a greater quantity than eight hundred arpens, French measure, every such claim, to the extent of eight hundred arpens, shall be confirmed.

Sect. 4. *And be it further enacted*, That the recorder of land titles for the said territory shall, without delay, make an extract from the books of the said board of commissioners of all the claims to land which are, by the preceding section, directed to be confirmed, a copy of which he shall transmit to the Commissioner of the General Land Office; and he shall furnish the principal deputy surveyor with a proper description of the tracts so to be confirmed, wherein the quantity, locality, boundaries and connection, when practicable, with each other, and those tracts that have been confirmed by the board of commissioners shall be stated. And whenever plats of the surveys, as hereinafter directed, shall have been returned to the said recorder's office, it shall be his duty to issue, for each tract to be confirmed as aforesaid, to the person entitled thereto, a certificate in favor of the party, which shall be transmitted to the Commissioner of the General Land Office; and if it shall appear, to the satisfaction of the said commissioner, that such a certificate has been fairly obtained, according to the true intent and meaning of this act, then, in that case, patents shall be granted in like manner as is provided by law for other lands of the United States.

Sect. 5. *And be it further enacted*, That the principal deputy surveyor shall survey, or cause to be surveyed, under the direction of the surveyor general, so much of the land in the said territory, to which the Indian title has been extinguished, as the

President of the United States may direct, into townships of six miles square, by lines running due north and south, and others crossing these at right angles; and also the lands the claims to which are directed to be confirmed by the third section of this act; and the lands the claims to which have been confirmed by the board of commissioners, where the same has not already been surveyed under the authority of the United States. And the principal deputy surveyor shall make out a general and connected plat of all the surveys directed by this act to be made, or which have already been made, under the authority of the United States, which he shall transmit to the surveyor general, who shall transmit copies of the said plat or plats to the recorder of land titles and the Commissioner of the General Land Office; the expense of surveying shall be paid by the United States: *Provided*, The same shall not, in the whole, exceed three dollars a mile for every mile that shall be actually surveyed and marked.

Sect. 6. *And be it further enacted*, That in all cases where, by reason of the indefinite description of the local situation and boundaries of any tract the claim to which has been confirmed by the commissioner, the same cannot be ascertained by the principal deputy surveyor, it shall be the duty of the recorder of land titles, on the application of the said principal deputy, to furnish such precise description thereof as can be obtained from the records in his office and the books of the said board of commissioners; and for the purpose of the more correctly ascertaining the localities and boundaries of any such tracts, the said principal deputy shall have free access, at all reasonable hours, to the books and papers in the recorder's office relating to land claims, and be permitted to take copies, or such extracts therefrom, or any of them, as he may think proper and necessary for the discharge of his duty in executing such surveys. And the said recorder shall be allowed twenty-five cents for the description of each tract which he shall furnish to the principal deputy surveyor as aforesaid.

Sect. 7. *And be it further enacted*, That every person or persons claiming land in the territory of Missouri, who are actual settlers on the land which they claim, and whose claims have not been heretofore filed with the recorder of land titles for the said territory, shall be allowed until the first day of December next to deliver notices, in writing, and the written evidences of their claims, to the said recorder; and the notices and evidences, so delivered within the time limited by this act, shall be recorded in the same manner, and on payment of the same fees, as if the same had been delivered before the first day of July, 1808; but the rights of such persons as shall neglect so doing within the time limited by this act shall, so far as they are derived from or founded on any act of Congress, ever after be barred and

become void, and the evidences of their claims never after admitted as evidence in any court of the United States against any grant derived from the United States.

Sect. 8. *And be it further enacted,* That the said record[er] of land titles shall have the same powers and perform the same duties in relation to the claims thus filed before the first day of December next, and the claims which have been heretofore filed, but not decided on by the commissioners, as the board of commissioners had, by former laws respecting claims filed prior to the first day of July, 1808, except that all of his decisions shall be subject to the revision of Congress. And it shall be the duty of the said recorder to make to the Commissioner of the General Land Office a report of all the claims which shall be thus filed before the first day of December next, and of the claims which have been already filed, but not decided on by said commissioners; together with the substance of the evidence in support thereof, with his opinion, and such remarks as he may think proper; which report, together with a list of the claims which, in the opinion of the said recorder, ought to be confirmed, shall be laid by the Commissioner of the General Land Office before Congress, at their next session, for their determination thereon. The said recorder, in addition to his salary, as fixed by law, shall be allowed fifty cents for each claim which has been filed but not decided on by the commissioners, or which shall be filed according to this act, and on which he shall make a decision, whether such decision be in favor of or against the claim; and a further allowance of five hundred dollars, which shall be paid after he shall have made his report to the Commissioner of the General Land Office; which allowance of fifty cents for each claim decided on, and five hundred dollars on the completion of the business, shall be in full compensation for his services, including clerk hire, respecting the claims to be decided on according to this act. (Approved June 13th, 1812.)

Act of Congress 26th May, 1824.

No. 509. An act supplentary to an act passed on the 13th day of June, 1812, entitled "An act making further provisions for settling the claims to land in the territory of Missouri."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of individual owners, or claimants, of town or village lots, out-lots, or common-field lots, in, adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa à Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, and Little Prairie, in Mis-

souri, in the village of Arkansas, in the territory of Arkansas, whose lots were confirmed by the act of Congress of the 13th of June, one thousand eight hundred and twelve, entitled "An act making further provision for settling the claims to land in the territory of Missouri," on the ground of inhabitation, cultivation, or possession, prior to the 20th day of December, 1803, to proceed, within eighteen months after the passage of this act, to designate their said lots, by proving, before the recorder of land titles for said State and territory, the fact of such inhabitation, cultivation, or possession, and the boundaries and extent of each claim, so as to enable the surveyor general to distinguish the private from the *vacant lots* appertaining to the said towns and villages.

Sect. 2. *And be it further enacted*, That immediately after the expiration of the said term allowed for proving such facts, it shall be the duty of the surveyor general, within whose district such lots lie, to proceed, under the instructions of the Commissioner of the General Land Office, to *survey, designate, and set apart, to the said towns and villages* respectively, so many of the said vacant town and village lots, out lots, and common-field lots, for the support of schools in the said towns and villages, respectively, as the President of the United States shall not, before that time, have reserved for military purposes, and not exceeding one-twentieth part of the whole lands included in the general survey of such town or village, according to the provisions of the second section of the above mentioned act of Congress; and also to survey and designate, as soon after the passage of this act as may be, the commons belonging to the said towns and villages, according to their respective claims and confirmations, under the said act of Congress, where the same has not been already done: *Provided*, That lots relinquished to the United States on account of damages done them by the earthquakes, and in lieu of which lands have been located elsewhere, shall neither be so designated or set apart, nor taken into the estimate of the quantity to which any town or village is entitled.

Sect. 3. *And be it further enacted*, That the recorder shall issue a certificate of confirmation for each claim confirmed, and shall receive for the services required of him by this act, the sum of one dollar for each lot so proved to have been inhabited, cultivated, and possessed, to be paid by the respective claimants; and, as soon as the said term shall have expired, he shall furnish the surveyor general with a list of the lots so proved to have been inhabited, cultivated, or possessed, to serve as his guide in distinguishing them from the vacant lots to be set apart as above described, and shall transmit a copy of such list to the Commissioner of the General Land Office.

Sect. 4. *And be it further enacted*, That the provisions of this act, and of the aforesaid act of the 13th of June, 1812, be, and

the same are hereby, extended to the village of Mine à Burton, and the right of filing their claims with the recorder.

Act of Congress 27th January, 1831.

No. 718. An act further supplemental to an act entitled "An act making further provision for settling the claims to land in the territory of Missouri," passed the thirteenth day of June, one thousand eight hundred and twelve.

[Sec. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the United States do hereby relinquish to the inhabitants of the several towns or villages of Portage des Sioux, Saint Charles, Saint Louis, Saint Ferdinand, Villa à Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, and Little Prairie, in the State of Missouri, all the right, title, and interest of the United States in and to the town or village lots, out-lots, common-field lots, and commons, in, adjoining, and belonging to the said towns or villages, confirmed to them respectively by the first section of the act of Congress entitled "An act making further provision for settling the claims to land in the territory of Missouri," passed the 13th day of June, 1812, to be held by the inhabitants of said towns and villages in full property, according to their several rights therein, to be regulated or disposed of for the use of the inhabitants, according to the laws of the State of Missouri.

Sec. 2. *And be it further enacted*, That the United States do hereby relinquish all their right, title, and interest in and to the town and village lots, out-lots, and common-field lots, in the State of Missouri, reserved for the support of schools in the respective towns and villages aforesaid, by the second section of the above-recited act of Congress, and that the same shall be sold or disposed of, or regulated for the said purposes, in such manner as may be directed by the legislature of said State.

Act of 13 June, 1812, 2 Stats. at Large, p. 748.
Act of 29 April, 1816, 3 Statutes, p. 328.
Act of 26 May, 1824, 4 ed., page 52.
Act of 27 January, 1831, 4 id., p. 435.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, A. D. 1869.

THE BOARD, &c., OF ST. LOUIS PUBLIC SCHOOLS
vs.
DAVID R. RISLEY *et al.*
No. 27.

Error to the Supreme Court of Missouri.

In this case the plaintiff below, now plaintiff in error, sued the ancestor of defendants in error in ejectment to recover a lot of ground having a width of 160 feet fronting on Main street in block 856 of the city of St. Louis, and running eastwardly with that width some three hundred feet or more to Front street. The defendants filed an answer denying the title of plaintiff.

The record is improperly loaded with much superfluous matter, but it appears that the case was tried in the St. Louis Circuit Court at the February term, 1864, when there was a verdict on which judgment was given for defendants.

By the bill of exceptions it appeared that the plaintiff put in evidence: 1st, the order of the Common Pleas Court of St. Louis, dated Nov. 9th, 1809, ordering the incorporation of St. Louis with certain boundaries, there detailed; 2d, a copy of the survey of the outboundary of the town of St. Louis, including the common and commonfields, directed by the 1st section of the act of Congress of 13th June, 1812;

3d, the assignment under the act of 26th May, 1824, of the land in controversy to the Schools, by survey executed Dec. 10th, 1855, numbered 400; 4th, an act of the Legislature of Missouri, approved 23d November, 1857, which may, by agreement, be read from the printed volume; 5th, a deed from the City of St. Louis to the plaintiff relinquishing the land in controversy; and, 6th, certain acts of the Legislature of Missouri and of Congress, with the details of which it is not deemed necessary to trouble the court, it being admitted throughout that the assignment of the land in controversy to the Schools, under the act of 26th May, 1824, vested a good title in the plaintiff, unless that land was confirmed by the 1st section of the act of 13th June, 1812, to those under whom the defendant claimed. In order to show that the land in controversy was confirmed by the 1st section of the act of 13th June, 1812, the defendant proved that prior to the 20th December, 1803, a lot, fronting on a road that was a continuation southward towards Carondelet of Second street, and running eastwardly to the river, was inhabited and cultivated by Madame Charleville. It was the north half of the block—the lower or south half being inhabited and cultivated by an old black man named Levellier (p. 19 of printed record). The lot extended to the river and was occupied to the water's edge. A pathway for cordelling flatboats was permitted by the owner along the eastern part of the lot (p. 20). Main street went only as far south as Plum street in Spanish times. Up to 1844 the river ate into the western bank. But owing to the great flood of 1844, and the extension into the river of the foot of several streets, a great filling up and deposit of sediment occurred. Madame Charleville, her children and son-in-law, lived on the lot until after 1825. Defendant's ancestor showed title under a son-in-law of Madame Charleville. The river has receded greatly since 1844. Block 856 was under water until 1844.

The evidence on the subject of possession by Madame Charleville and her family for a period embracing December 20, 1803, of the lot on Second street, running eastward to the

river, and including the land in controversy between its northern and southern lines, produced, was ample.

The defendants offered in addition evidence showing that the City of St. Louis (under which the plaintiff claimed title by deed) had caused the property in dispute to be assessed for a long series of years to the ancestor of the defendant, and had collected taxes thereon from him. They also showed that their ancestor had paid taxes on the property to the State for a long time before 1857—the property being described in the receipts as bounded east by the Mississippi river, in both cases. This testimony is found from pages 27 to 43 of the printed record. It was offered only for the purpose of proving the boundaries of the lot held by the defendants (see p. 43 of record), and was admitted against the objections of the plaintiff.

In rebuttal the plaintiff offered in evidence a concession of a lot of ground to one Louis Ride, and gave evidence tending to show that the lot described in the concession was not riparian.

By way of rejoinder the defendants gave evidence showing that the subject of this last named concession to Louis Ride was nowhere in the neighborhood of Madame Charleville's lot —was in fact in a different and distant part of the city. The testimony on this head is referred to at pp. 49 and 50 of the printed record. It never was formerly incorporated into the bill of exceptions.

The plaintiff also gave in evidence a chart called Chouteau's map of St. Louis, purporting to have been made in 1764, and first deposited in the office of the Recorder of land titles in 1825. In connection with this paper the plaintiff read a decision of Judge Scott from 31 Mo. Rep., p. 112. The court admitted the map in evidence.

The plaintiff then produced a number of confirmations and surveys made to other persons than the defendant's ancestor, and situated in other parts of the city. These were apparently introduced in order to show that there were some proprietors in the town of St. Louis whose lands did

not reach the river, and who, therefore, were not entitled to alluvial accretions. (See p. 45 of printed record.) He also offered evidence tending to show that a path existed along the eastern or river end of the lots below Plum street, and between Plum street and the bridge over Mill creek, and that this path was used by voyagers; that its situation shifted with the stage of the river, the boatmen cordelling the boats being sometimes by the high water driven further east than when the water was low.

This was substantially all the evidence. As was well said by the Supreme Court of Missouri in deciding this case: "There was much other testimony on both sides, but the above constitutes essentially the controlling facts, and the balance was merely auxiliary or cumulative."—40 Mo. Rep., p. 369.

Upon this testimony the court instructed the jury as follows on the part of the plaintiff:

1. The jury are instructed that the calls for the Mississippi river in the deeds or conveyances, read in evidence, from one private individual to another private individual, do not give or create riparian rights.

2. The eastern boundary line of the corporation of St. Louis of eighteen hundred and nine, read in evidence, and the eastern line of the out-boundary of December the eighth, eighteen hundred and forty, read in evidence, both extended to the eastern boundary of the State, which is the middle of the main channel of the Mississippi river.

3. If the jury believe from the evidence that a street, or towpath, or passway, or other open space, was permanently established for the public use, between the Mississippi river and the most eastern row of lots or blocks, of which block 44 was one in the former town of St. Louis when said town was first laid out and established or founded, then, and in that case, the owners or claimants of said lots or blocks are not riparian proprietors of the lands between said lots and blocks and said river.

4. If the jury believe from the evidence that a street, or

towpath, or passway, or other open space, was permanently established for the use of the public between the Mississippi river and the most eastern row of lots or blocks (of which block 44 was one), in the former town of St. Louis, when said town was first laid out, or established, or founded, and that the river after that time washed away the land so that the western edge or bank thereof was west of the eastern boundary line of said lots or blocks, and that, afterwards, the river receded so that the present edge or bank thereof is no further west than when said town was first laid out, established, or formed, the owners of said lots are not entitled to riparian rights.

5. If the jury believe from the evidence that a street, or towpath, or passway, or other open space, was permanently established for the public use, between the Mississippi river and the eastern row of lots or blocks (of which block 44 was one), as said town existed prior to December 20, 1803, then, and in that case, the owners or claimants of said lots or blocks are not riparian proprietors of the lands between said lots or blocks and the river.

For the defendants, the court gave the following instructions:

1. If the jury believe from the evidence that prior to the 20th December, 1803, Madame Charleville inhabited, cultivated and possessed a lot of ground in the town of St. Louis, being part of the present city block 44, and bounded on the west, by the present Second street; on the north, by the present Lombard street; on the east, by the Mississippi; and on the south, by the north line of the lot of Levellier, which was parallel to said Lombard street; that said Madame Charleville claimed title to said lot, and she, and those claiming title under her, continued to inhabit, cultivate and possess said lot down to the 13th June, 1812; that river accretions have been made to said lot along its eastern line, and the premises sued for are a part of said accretions, lying between the north and south lines of the lot, extended to the river in its present position,—then the plaintiff cannot recover, and they must find a verdict for the defendants.

2. The circumstance that a passage-way or towpath existed along the river bank will not affect the right of the parties if the jury believe that the same was kept up at the charge and risk of the proprietor of the lot; that it followed the changes of the river going to the east and west as the river receded from or encroached upon the lot, and that the eastern enclosure of the proprietor was advanced or set back with such changes.

3. If the jury believe from the evidence that the claim confirmed to and surveyed for the representatives of Louis Ride, as shown in evidence by the plaintiff, was another and different claim from that under which Madame Charleville inhabited, cultivated and possessed her lot in block 44, and that said lot claimed by and confirmed to the representatives of Ride, was, in truth, totally situated in another and different block, then the jury ought wholly to reject the confirmation and survey for the representatives of Ride as being irrelevant to the matter in controversy in this suit.

The plaintiff excepted at the time of the giving of these instructions.

The plaintiff asked and the court refused the following instructions:

1. If the jury believe from the evidence that block 44 in the former town of St. Louis was, by a United States survey, surrounded on all sides by streets, and that said survey has from the time of the recording and approving of the same stood as an approved survey without appeal, then the owners of the lot in said block, thus surrounded, are estopped from claiming any ground beyond the street which is by the survey made its eastern boundary.

2. The jury will find for the plaintiff, if they believe from the evidence that all of the maps, plots, surveys, deeds, and other documents and instruments, read in evidence by the plaintiff, are genuine, that the premises in controversy are not within the boundaries of any land confirmed to any person or persons, but are within the boundaries of the corporation of 1809, read in evidence, and within the boundary of December 8, 1840, read in evidence, and within the

assignment, being survey 400, read in evidence, and within the boundaries of the land described in the deed from the City of St. Louis to the plaintiff, read in evidence.

3. All streets, wharves, avenues, alleys, passways, and thoroughfares in towns and cities are presumed to have been established for the public use, and those who wish to show the contrary must prove it. If, therefore, the jury believe from the evidence that there was a street, towpath, passway or other open space, in the former town of St. Louis, between the Mississippi river and the most eastern row of lots or blocks (of which 44 was one), such street, towpath, passway, or other open space, the jury will presume was established for the use of the public, and not affected, impaired or interfered with by riparian rights, unless the contrary be proven to their satisfaction.

4. If the jury believe from the evidence that in accordance with the plan of the former town of St. Louis, as the same was first laid out, established and founded, there was between the most eastern row of blocks and the Mississippi river, from Plum street to Hazel street, a space of ground left for a street, road, towpath or levee, or dedicated to any other use common to the inhabitants thereof, or to the public use, then the lots in said blocks are not riparian, and not entitled to alluvion.

5. If the jury believe, from the maps and plans and all other evidence in the case, that the Spanish authorities intended to leave a space from Plum street to Hazel street, in the former town of St. Louis, between the most eastward tier of blocks (of which block 44 is one) and the Mississippi river, for a continuation of Main street, or for Front street, or for any other public purpose, then the lots in said block have no riparian rights.

6. The jury are instructed to disregard all parol evidence tending to establish a boundary of a lot varying from that of the lots in the same tier, if they are satisfied from all the evidence in the cause that such uniformity was part of the plan of the Spanish town of St. Louis.

7. The jury are instructed that, as a question of law, the owners of lots in the town of St. Louis, as said town existed prior to December 20, 1803, have never had any riparian rights.

8. If the jury believe from the evidence that the defendants claim under a confirmation, and that the survey of such confirmation does not call for the river as a boundary, they are estopped by said survey, and cannot claim any rights as said riparian proprietors.

9. If both the confirmations and surveys of the United States to private individuals for the most eastern row of lots west of premises in controversy, do not call for the river as a boundary, then the owners of said lots are not entitled to premises as riparian proprietors.

10. If the jury believe from the evidence that prior to December 20, 1803, there was a road or passway between the front row of the lots, in the former town of St. Louis, and the Mississippi river, and that the river after that time washed away the land so that the western edge or bank thereof was west of said road or passway and west of the eastern boundary line of said lots, and that afterwards the river receded so that the present western edge or bank thereof is no further west than where it was prior to December 20, 1803, the owners of said lots are not entitled to riparian rights.

11. As the concession, confirmation and survey to Louis Ride, or his representatives, call for a permanent road on the east, neither the said Ride, nor his representatives, nor any one claiming by and through, or under him or them, can claim any riparian rights.

12. It is only the acts and proceedings of the Spanish government which have been confirmed by the United States, or the acts and proceedings of the United States themselves, that can give or create riparian rights, or any other rights to the land in dispute. No act or proceeding of the corporation of St. Louis, or of any private individual, can give or create any such right or rights.

13. The whole or any part of a Spanish concession which

has not been confirmed by the United States, does not grant or convey any right, title or interest in or to any lands.

14. The defendant in the cause has set up no title in himself or those whom he represents, or under whom he claims, but seeks to maintain his possession as a mere intruder, by setting up a title in a third person with whom he has no privity. In such a case, it is incumbent upon the party setting up the defence to establish the existence of such an outstanding title beyond all controversy. It is not sufficient for him to show that there may possibly be such a title. If he leaves it in doubt, that is enough for the plaintiff. Where the plaintiff has a *prima facie* good title, he has a right to rely on such title, and is not bound to furnish any evidence to assist the defence. It is not incumbent on him negatively to establish the non-existence of such an outstanding title; but it is the duty of the defendant to make its existence certain.

There was a verdict for the defendants. The plaintiff appealed to the Supreme Court of Missouri, which affirmed the judgment of the Circuit Court, in a very careful opinion to be found at pages 369, 370 & 371 of 40 Mo. Rep.

After stating the case, the court remarks (p. 369 of 40 Mo. Reports): "There was much other testimony on both sides, but the above constitutes essentially the controlling facts, and the balance was merely auxiliary or cumulative. Several objections were taken on the trial to the admissibility of evidence on the part of the appellant, but the objections were mostly of a general character, without specifying any particular reason against the admission; and where such is the case, this court has held that it will not look into the question to see or conjecture upon what grounds the evidence was objectionable. Evidence may be admissible for one thing in the course of a trial, when it would be wholly excluded for another, and it is the duty of the party objecting to state specifically his reasons therefor." Then going on to consider the evidence of the payment of taxes by the ancestor of defendants, the court says (p. 370): "The party here

was in possession, and the evidence was offered ostensibly [*que.* professedly?] for the purpose of defining the boundaries. We think the evidence was properly allowed to go to the jury as a circumstance to show what was the understanding of the parties as to the lines and boundaries of the lot."

Coming, then, to the testimony of one particular witness offered by defendants, the court says that it was not admissible; but that, "granting it to have been wholly incompetent, when the other proofs are considered together with the original concession [to Louis Ride] we do not see that the appellant was injured by it." (p. 370). * * * "In the present case, the dispute between the parties grew out of the existence of a road along the eastern line of the lot. The law seems to be well settled that tradition, reputation and hearsay are admissible to prove the extent, character and existence of public rights as regards the location and boundaries of things of a public nature. The only conflict here being as to whether the eastern line of the lot was bounded by a public highway, it follows that it falls fully within the rules admitting hearsay, reputation and tradition. But it is needless and superogatory to examine with particularity and detail all the questions that have been raised in argument. The only important point in the whole case turns on the question as to whether the proprietors of the lots are entitled to riparian privileges. This question has been considered twice before in this court and once in the Supreme Court of the United States, and must be considered as settled—as *res adjudicata*—and no longer a subject for discussion.

"In the case of Jones v. Soulard, 24 How. 41, it is expressly decided that the calls for the eastern line of the boundary of St. Louis, in the incorporation of 1809, make the city a riparian proprietor upon the Mississippi, and as such entitle it to all accretions as far as the middle thread of the stream. In Smith v. Public Schools, 30 Mo. 301, it is held that if the river is the boundary of a town lot, it may be riparian just as much as a tract of land would be in the country; and the question is again examined, affirmed and

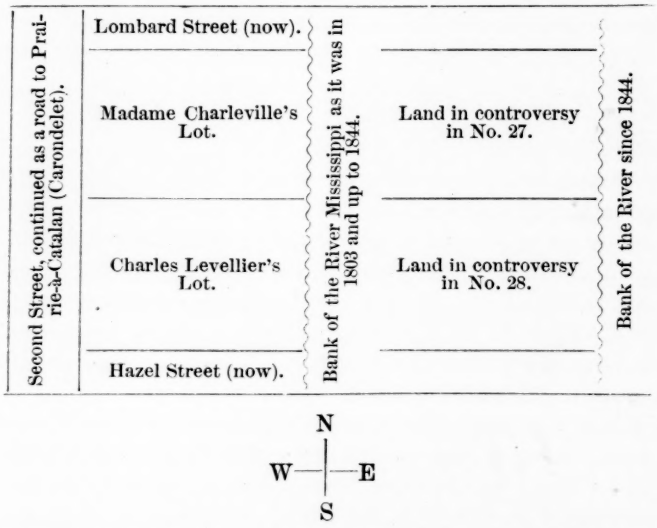
approved in LeBeau v. Gaven, 37 Mo. 556. That the calls and descriptions contained in the original concession to Leveiller called for the bank of the Mississippi as its eastern boundary cannot be for a moment gainsayed or doubted.

"Whatever evidence there was bearing on the subject was given to the jury under instructions of the most favorable character for the appellant. We have been unable to detect any error in the action of the court in either giving or refusing instructions, and we accordingly order its judgment to be affirmed" (pp. 371–2).

This affirmance was had in 1867. The plaintiff sued out the present writ of error, under § 25 of the Judiciary Act, and the record presents the singular spectacle of an attempt to reverse the judgment of the highest court of a State, in a cause of which the most conspicuous feature is the faithful, cheerful and intelligent adherence, by the State Court, to the rule of law established by the Supreme Court of the United States on this very subject. This is undeniably true. No objection can be taken to the judgment of the Supreme Court of Missouri in the case at bar, which does not challenge the decision of Jones v. Soulard, 24 How. 41. It is not intended, of course, that some minor questions did not arise in this case which were not presented in Jones v. Soulard. But the main question, which alone gives jurisdiction to this court under § 25 of the Judiciary Act, is precisely the same in each.

The facts are these. Prior to 1803, there was a lot in the old town of St. Louis fronting westwardly on the extension southwardly of Second street (which was the road running to Prairie-à-Catalan or Carondelet) and running eastwardly to the Mississippi river. This lot was inhabited, cultivated and possessed prior to 1803 by an inhabitant of St. Louis, and ever since that time by those claiming under him. In 1803 and until 1844 the west bank of the river was within less than 200 feet of Second street. Owing to the enormous flood of 1844 there was a deposit of sand on the western shore, and the present edge of the western bank of the river

is some six or seven hundred feet east of Second street. The following diagram will illustrate this:



Now, if the lot, bounded on the east by the Mississippi, followed the river in its receding bed; if the lot was entitled to the alluvial accretion—the eastern no less than the western part of it was confirmed to the person who occupied it before to 1803; this being the operation of the first section of the act of 13th June, 1812.

If such a lot was not entitled to the alluvial accretion, all the space between the old and the new bank of the stream will be liable to fall within the description of the lands reserved for the use of Public Schools by the second section of that act. For convenience of reference the first and second sections of that act are here quoted.

The first section declares "That the rights, titles and claims to town or village lots, out-lots, common field lots and commons, in, adjoining or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, &c., in the Territory of Missouri, which lots have been inhabited,

cultivated or possessed prior to the 20th December, 1803, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid according to their several right, or rights in common, thereto," &c. It was further provided in this section, that a survey should be made of the out-boundary of the several towns or villages, so as to include the out-lots, common field lots and commons thereto respectively belonging.

Section 2 declares "That all town or village lots, out-lots or common field lots included in such surveys, which are not rightfully owned or claimed by any private individuals, or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes, shall be and the same are hereby reserved for the support of schools in the respective towns or villages aforesaid."

It thus appears that if any lot in St. Louis was, prior to 1803, inhabited, cultivated or possessed by any private individual, the same was confirmed to him by the first section of the act of 1812. If there was in the village any lot in respect of which on the 20th December, 1803, no private claim existed, the second section of the same act reserved it for the support of schools.

In the case at bar there is no dispute, (at least no rational room for disputing,) that Mad. Charleville prior to and after 1803, occupied and possessed a lot which was bounded west by the road leading to Prairie-à-Catalan (now Second st.) and east by the Mississippi river (see testimony of Jno. Pomcelli, p. 19; that of J. B. Hortiz, p. 20, and that of D. Adams, p. 21, of the printed record). The land now in controversy is included between the north and south lines of this lot, produced eastwardly, and the river bank in the position to which it has receded since 1803. If the fact that the river was the boundary of the lot in 1803, carried the owner of it to the *medium filum aquæ*, the lot, up to the middle thread of the stream, was confirmed by the first section of the act of 1812. This was the whole matter in dispute in this cause. To use

the language of the Supreme Court of Missouri, (p. 370 of 40 Mo. Rep.) "The only important point in the whole case turns on the question whether proprietors of the lots are entitled to riparian privileges." The Supreme Court of Missouri remarked upon the existence of some testimony in the record which it regarded as rubbish, but as harmless rubbish, the introduction of which in no way injured the plaintiff below (the plaintiff in error here) and placed its decision solidly upon the ground that such lots as this of Madame Charleville *were*, as a matter of law, according to repeated decisions, entitled to riparian privileges, and that whatever testimony there was, bearing on the inquiry as to matters of fact, was given to the jury "under instructions of the most favorable character" for the Schools. The undersigned now proceeds to the examination of these, regretting the tiresome nature of the task, and resolving to perform it as briefly as possible.

As to those given at the request of the plaintiff, it is conceived little need be said. Many of them might have been refused with propriety, for almost without exception they assume that there was before the jury evidence for which the record will be searched in vain. These instructions, however, are worth attention as containing a declaration of law that calls in private deeds are not evidence of riparian rights (1); that the town of St. Louis, according to the call for the river in the act of incorporation of 1809, extended to the middle thread of the stream (2); and that the existence of a street, pathway, towpath, or other open space, permanently established for the use of the public, between any lot and the river, hindered that lot from being riparian (3). All these instructions the court gave at the instance of the plaintiff.

For the defendant the court instructed the jury

1. "That if Madame Charleville inhabited, cultivated and possessed a lot of ground in St. Louis prior to 20th December, 1803, bounded on the west by what is now Second street, north by what is now Lombard street, east by the Mississippi river, and south by lot of Levellier, claiming to be the owner

of it, down to 13th June, 1812; that accretions have been made to this lot along its eastern or river line, and the premises in controversy are part of such accretions lying between the north and south lines of the lot extended to the river in its present position—then the plaintiff cannot recover."

This instruction merely tells the jury that a lot bounded on the river goes to the middle of its channel; that an inhabitant of St. Louis, inhabiting, cultivating and possessing such a lot, prior to 20th December, 1803, and down to 1812, claiming it as his own, was confirmed in his title thereto by the first section of the act of June 13, 1812, and that plaintiff claiming under the second section of that act could not prevail against him.

The second instruction told the jury that a towpath along the river bank, used by persons navigating the stream for warping up their boats, kept up by the proprietor of the land adjoining at his own cost, and varying in its position with the stage of the water, did not impair the rights of the proprietor to riparian accretions.

This instruction is in full conformity with the most approved authorities. See Smith v. Schools, 30 Mo. Rep., p. 290; Municipality v. Cotton Press, 18 La. Rep., p. 236, (6 Martin's Louisiana Rep). This rule is perfectly consistent with what is laid down by Sir Matthew Hale in his celebrated treatise. He says distinctly (ch. 11) that if the streams to which lands adjoin be navigable, then "whether they be fresh or salt, whether they flow and re-flow or not, they are *prima facie publici juris*," "not in respect to the propriety [*proprietorship* we would say now] but to the public use." That is to say, the public has the right to float boats or vessels on the waters of such streams. This is an easement the exercise of which is no trespass to the proprietor of the adjoining land. The use of the shore, when necessary for warping up the boats against the current is equally consistent with the rights of the riparian owner. Otherwise, where could the line be drawn? In Sec. 551 of Angell on Water Courses, it is intimated that there was a difference on this point between the civil and the

common law, and it is admitted on all hands that by the rule of the civil law this towpath along the shore was consistent with the riparian rights of the owner of the land. As the civil law prevailed in Missouri until the introduction of the common law in 1816, the position taken by defendants in error is superfluously fortified.

The third instruction told the jury that if the lot occupied by Madame Charleville was a different lot from that which had been granted to Louis Ride by the concession given in evidence, then the boundaries of Louis Ride's lot were of no consequence in the present controversy.

It will be remembered that defendants had put in evidence two concessions, dated in 1788; one to Charles Levellier, and one to Augustin Amiot. In each of these, the boundaries were Second street, or the road leading to Carondelet on the front, and the Mississippi river on the rear. But in the concession to Levellier, a lot belonging to "the heirs of Louis Ride" was said to be on one of the other sides of his lot. As Mad. Charleville's possession adjoined Levellier's on the north, and as Amiot's concession lay to the south of him, it was assumed by the Schools: 1st. That the lot which Mad. Charleville occupied prior to 1803 was that which was spoken of in 1788 as belonging to the heirs of Louis Ride; and 2d. That the lot spoken of in the concession of 1788 as belonging to the heirs of Louis Ride, could be no other than the lot which had been granted to him by the concession produced by the plaintiff. Evidence was given by the Schools to show that this last lot was not riparian.

Of course everything here depended on the identity of the lots spoken of as belonging to Ride. The Schools (plaintiff in error) assumed this identity. The defendants in error gave evidence showing plainly that the lot described in the concession to Ride lay in a different and distant part of the town from that where Mad. Charleville's land lay. The instructions given told the jury that if they believed this evidence the boundaries of Ride's lot were nothing to the purpose. And this is so plain that an apology seems due for dwelling on the point at all.

Upon these instructions the case was given to the jury—instructions which the Supreme Court of Missouri declares to have been "of the most favorable character for the appellant" (now plaintiff in error).

But besides these, the plaintiff below (now plaintiff in error) asked, in one batch, (14) fourteen other instructions, all of which the court refused, and to this refusal the plaintiff excepted.

The undersigned is doubtful of the propriety of saying anything by way of comment on this ruling. It has been declared by this court to be a "settled rule that if a series of propositions be embodied in instructions, and the instructions are excepted to in a mass, if any *one* of the propositions be correct, the exception must be overruled." 1 Black. (U. S. S. C.) Rep., 209, 220. That was a case in which the whole series of instructions had been given to the jury. Some one of them (it seems to be assumed) may have been open to criticism; but because of the vagueness of the exception the criticism cannot be heard. It is much within this rule to hold that if a series of propositions be embodied in instructions tendered and *refused*, the exception to the refusal of the mass will be overruled if a single faulty instruction be found among them. This consideration perhaps renders it unnecessary to examine the refused instructions at all, except to show that *one* of them is wrong; whereas it is confidently believed that not one of them is right.

The first of these instructions declares that if the land now known as block 44 was at any time designated by a "United States survey," in which it was surrounded on all sides by streets, and that the owners of land therein have not appealed against the approval of that survey, then they are estopped from claiming any land beyond those streets.

It is difficult to say what legal principle was in the mind of the framer of this instruction. Possibly the case of Smith v. The Schools, 30 Mo., p. 301, was what he was thinking of. But if so, the point of that decision was entirely missed. It must be remembered that there are no U. S. surveys of city blocks as such. What does occur when a United States sur-

veyor speaks of a city block is simply this: When U. S. surveys are made of confirmations within the city, the surveyor represents on his plats the exterior lines of the blocks as established by municipal authority; but this is only for convenience of reference and the easy ascertainment of the position of the property. In many cases the confirmations surveyed extend beyond the blocks. In the instance of block 44, however, the surveys of the confirmations do not, as made, reach to the exterior lines. The utmost that can be inferred from the surveyor's plats is that when he made his surveys, a few years ago (for aught that appears in this instruction it may have been immediately before the commencement of this action), he found that the city had projected a street, and he represented this street on his plat. According to the instructions, if the city projects a street traversing or separating into two parts land belonging to any person, and the United States surveyor at any time represents the street so projected on a plat of survey, the owner loses so much of his land as lies beyond the street—and this without any notice to him of the making of such a survey. This proposition is monstrous and absurd.

The second instruction refused was admirably calculated to puzzle the jury. In no point of view could it have guided them to a right decision. By the first instruction given at the instance of the defendant, the court told the jury what *facts* must be proved to entitle the defendant to the land in controversy under the first section of the act of 1812. This was the only proper instruction to them on this head.

The third instruction refused is confused and misleading. The presumption of which it speaks would, in every case, be one of fact, not of law. It declares that if an open space existed between a lot and the river, then the lot was not riparian. If this means that if the lot did not extend to the river it was not riparian, the proposition cannot be disputed; and the court had already declared this by the 3d, 4th and 5th instructions given at the plaintiff's instance. But this can hardly be the meaning, for the qualification is added "unless the contrary be proven." The framer must then have been

thinking of a case where, possibly, the lots might be riparian and might be so proved. By the phrase 'open space,' he may have meant 'unoccupied space,' or 'uninclosed space;' in which case both the inference and the conclusion are alike untenable; for it cannot be said, from the fact of a proprietor leaving part of his land unoccupied or uninclosed, that he intends to devote it to public use; nor if he did this, can it be concluded from his dedication of such part, that his riparian rights are lost. But a shorter answer is, that this instruction at best was only a doubtful and abstract statement of the propositions which had already been given in the concrete to the jury, so far as they had any relevancy to the inquiry in which they were engaged.

The 4th, 5th and 6th instructions refused, rested upon the assumption that the authorities of the Spanish Government had a fixed and ascertained plan for laying off the town of St. Louis in 1764, and that this plan was not only immutable, but that a paper called "Chouteau's Map," which was first filed in the office of the Recorder of Land Titles, in St. Louis, in *1825*, was the authentic, exclusive and infallible evidence of this scheme. All of these assumptions are wholly unwarranted. If we accept "Chouteau's Map" as the scheme or plan for laying off the town of St. Louis, which *he* recommended to the authorities in 1764 (we have no sort of authority for assuming that he ever did this), nothing is plainer than that one of two things must be true: either Chouteau did not, in making this sketch, go upon the ground and ascertain carefully whether natural obstacles interfered with the plan sketched in his diagram; or else he attempts to make these natural obstacles bend to his theory of what the town should be. Chouteau was not proprietor of the land to be covered by the town, nor an officer of the Crown of Spain in 1764, when this plan is supposed to have been made. We see plainly that the Spanish Governor did not pay any attention to this plan. Either he never heard of it, or, knowing of it, he treated it as worthy of no heed; for the grant to Levellier, the grant to Amiot, and the possession of many others, permitted by the authorities, were inconsistent with Chouteau's

plat. The refused instructions, 4, 5 and 6, declared that the presumption of fact was that the Spanish Government sanctioned a particular plan of St. Louis; whereas, the only evidence we have on the subject proves clearly that all the limitations of the supposed scheme were disregarded by the Spanish Government. According to the theory of the plaintiff, Chouteau's map represents the general plan of the town. This map was deposited by Chouteau, in 1825, in the Recorder's office. There is no certificate upon it by him. Its character, whatever it was, must have rested upon Mr. Chouteau's parol statement, without any sanction of either an oath or official duty. We do not know what his statement, if any, was. But whatever it was, it could be no more than a mere statement, which is admitted as tradition. If the instructions refused should have been given, it would follow, among other things, that the general plan of a town may be proved by parol, but that particular deviations from that plan cannot be proved by parol. I am wasting time in analyzing these instructions further.

The 7th instruction refused needs no comment; and the 8th loses sight of the repeated decisions of this court and of the courts of Missouri (Guitard v. Stoddard, 16 How. 494), that confirmations made by the first section of the act of 13th June, 1812, are the legal consequences of the judicial proof of the conditions stated in that section, and that they require no survey. The 9th instruction refused is clearly inapplicable and irrelevant; and whatever has a semblance of propriety in the 10th had already been given to the jury in the 4th instruction asked by the plaintiff and given by the court. As to the 11th, the proof was plain that the land in controversy was *not* held under Louis Ride, and the proper instruction an that head had been given. The 12th and 13th are irrelevant, and misleading abstractions, the giving of which could have been of no sort of guidance to the jury.

The 14th (and last) instruction of this refused batch, assumes as a fact what the record plainly disproves. Risley, the ancestor of the defendants in error, proved a title in himself under Francis Tayon, son-in-law of Mad. Charleville, and

his title under Mad. Charleville was at least good by limitation. But the proposition, even if founded on a true hypothesis of *fact*, is not law. The plaintiff in ejectment must recover on the strength of his own title, not on the infirmity of that of the defendant. A title outstanding in any third person is just as available to defeat the plaintiff as if it were vested in the defendant; moreover, in civil cases "proof beyond all controversy" is never required. For these reasons the instruction is erroneous. But it is, besides, a curious and vicious mixture of incongruous propositions. It is felt to be a waste of time to discuss it further.

In examining these instructions, refused by the court, the undersigned has not thought it needful to dwell on the familiar rule that the refusal of an instruction embodying an unexceptionable proposition of law, is no ground for reversing a judgment, when the instructions actually given contain a correct exposition of the law applicable to the cause. It must always appear when such a refusal is assigned for error, that, for want of the instruction which was refused, the jury was either *certainly*, or *possibly*, misled, to the injury of the party excepting. It would be difficult to do this in the case at bar in respect of any of the whole list of the fourteen instructions refused.

The controversy lies, indeed, within narrow limits. Madame Charleville, prior to 1803, inhabited, cultivated and possessed a lot in the town of St. Louis, bounded on the west by the road leading to Carondelet which was the continuation of Second street, and on the east by the river. The river was then within 200 feet of the road. The fence on the river bank was frequently moved back because of the encroachment of the stream, but the river was always her boundary to the east. She and those claiming under her have occupied the lot to the present time. Some years ago the river receded to the east leaving a large space between the old and new positions of its banks. This is claimed by Madame Charleville's representatives as appurtenant to her lot. They claim that as her lot was bounded east by the

river, she was entitled to go "*usque ad medium filum aquæ*," subject, of course, to the easement of navigation, which belonged to the public, and that whenever the exercise of her proprietary rights ceased to interfere with this public easement, her rights as proprietor stood without qualification. It was, of course, claimed that Madame Charleville was confirmed up to the middle of the main channel of the stream by the 1st section of the act of 13th June, 1812, by virtue of having inhabited, cultivated and possessed this lot prior to 20th December, 1803, so far as it was then possible to inhabit, cultivate and possess it. And for these conclusions reliance is placed on the following decisions of this court:— Guitard v. Stoddard, 16 How. 494; Garrison v. Savignac, 18 How. 136; Jones v. Soulard, 24 How. 42; and the following decisions of the Supreme Court of Missouri, viz:— Lebeau v. Gaven, 37 Mo. R., p. 556; The Schools v. Risley, 40 Mo. 356; Smith v. Schools, 30 Mo. 290.

On the other hand, the Schools claim this accretion under the 2d section of the act of 13th June, 1812, as land which on the 20th December, 1803, was not rightfully owned or claimed by any individual, and the City of St. Louis claims it as being granted to her by an act of Congress entitled "An Act about swamp lands in St. Louis County," approved March 3, 1851. The city conveyed to the Schools such title as it had, and it will be seen that the inquiry reduces itself to this: "Did Madame Charleville's lot in 1803 extend to middle of the river?" If it did, then the other questions fall. If it did not, their solution becomes important. But that it did extend to the middle of the river, was by the court declared to depend upon the affirmative answer to the proposition hypothetically stated in the first instruction given to the jury at the instance of the defendants below. The jury could only find for the defendants if they found that this proposition was affirmatively established. Madame Charleville's lot, then, was bounded east by the river; was inhabited, cultivated and possessed by her prior to 1803 and after 1812; and the lot in controversy is an alluvial accretion to it. As a

legal consequence, it is part of her lot, and was so even while it was covered by water in 1812. This is the only question in the case; and by the light of the numerous and concurring decisions quoted, it can be answered only as it was answered by the Supreme Court of Missouri.

Respectfully submitted,

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